



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1062 OF 2024

Kunal Babulal Jaiswal
Age: 39 years,
R/o. Dattanagar, Nanded,
Tq. And Dist. Nanded

.. Petitioner

Versus

1. District Magistrate,
Nanded.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl), Mantralaya,
Mumbai.
3. The Superintendent
Chhatrapati Sambhaji Nagar,
Central Prison.

.. Respondents

...
Mr. Rupesh Anil Jaiswal, Advocate for the petitioner.
Mr. A. D. Wange, APP for the respondents – State.
...

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 06 AUGUST, 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh Jaiswal for the
petitioner and learned APP Mr. A. D. Wange for respondents –
State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention order bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-30 passed by respondent No.1 on 27.03.2024.

4. Learned Advocate for the petitioner has taken us through the impugned order and the material which was supplied to the petitioner by the detaining authority after passing of the order. It is submitted that though several cases were registered against the petitioner, the detaining authority has taken into consideration three offences i.e. Crime Nos.221 of 2023, 70 of 2023 and 385 of 2023. All are under Section 65(e) of the Maharashtra Prohibition Act, 1949. These cases are stated to be pending trial. The detaining authority though mentioned the earlier offences also, but wrongly shown that they are pending for trial, when in fact the applicant has been acquitted from Crime No.133 of 2020. The detaining authority has contended that since the petitioner is carrying out the activity of storing illicit liquor, he is a bootlegger within the meaning of Section 2(b) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-

Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the “MPDA Act”). However, the grounds of detention would show that there was no subjective satisfaction arrived at by the detaining authority. The CA reports are stated to be received stating that the samples taken showed ethyl alcohol, yet further report of an expert that the said liquid was hazardous for human consumption is not produced on record and not supplied to the petitioner. Another fact to be noted is that as per the detaining authority, a confidential enquiry was conducted by Inspector of State Excise Department, Nanded City in respect of the alleged illegal bootlegging activity of the petitioner and recorded the in-camera statements of two witnesses, but neither the report submitted by said inspector nor the statements of in-camera witnesses have been supplied to the petitioner. The non supply of those documents on which the detaining authority alleges that there was subjective satisfaction affects the constitutional rights of the petitioner. The last limb of the argument of the learned Advocate for the petitioner was the delay in passing the order. He submits that the last offence is stated to have been committed on 13.12.2023 and the detention order has been passed on 27.03.2024. The said delay has not

been explained and, therefore, the order passed by the detaining authority is illegal and the confirmation thereof by the State Government without considering the representation that was presented is also illegal. The State Government has never communicated as to what action they have taken in respect of the representation made by the petitioner on 24.04.2024.

5. Learned APP strongly opposes the petition and relies on the affidavit-in-reply by Abhijit Rajendra Raut, District Magistrate, Nanded. The said affidavit contains the reproduction of the contents of the detention order and, therefore, we are not reproducing it once again. It is denied that the order is mechanically passed regarding the detention of the petitioner. It is stated that subjective satisfaction was arrived at on the basis of the documents produced with the proposal, facts in the case pending before the Courts of law and the CA reports. The subjective satisfaction is on the basis of all the three offences and two in-camera statements of the witnesses. The petitioner has raised public order and in spite of preventive action, his activities in bootlegging are not curtailed and, therefore, the detaining authority had no option, but to detain him under the provisions of law. The order of the detaining authority was placed before the

Advisory Board. The Advisory Board has given its opinion and has not found any illegality in the order. Therefore, case is not made out for exercise of the writ jurisdiction.

6. We would like to rely on the Three Judge Bench decision of the Hon'ble Supreme Court in ***Nevanath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]***, wherein after considering various judgments, the legal position has been summarized as follows -

“43. We summarize our conclusions as under :-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,
- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and

irrelevant circumstances, then such subjective satisfaction would be vitiated,

- (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,
- (v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,
- (vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,
- (vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,
- (viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision

of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

- (ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

7. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or not. In **Nevanath** (*Supra*) itself it has been reiterated by the Hon’ble Supreme Court that illegal detention orders cannot be sustained and, therefore,

strict compliance is required to be made, as it is a question of liberty of a citizen. Perusal of the case papers which is made available by the learned APP would show that it does not contain the statements of the two in-camera witnesses. When a specific ground has been taken in the representation as well as in the present petition, it was incumbent upon the respondent – State to produce on record that the copies of the statements of in-camera witnesses ‘A’ and ‘B’ were supplied to the petitioner. When the detention order makes a reference to those statements and it is stated to be a piece of evidence, which was considered by the detaining authority for arriving at a subjective satisfaction, then the copies of the same ought to have been given to the petitioner. The grounds of detention does not make a mention as to when those statements were verified by any subordinate officer of the detaining authority and whether the detaining authority himself had verified those statements. Surprisingly, in the affidavit-in-reply also, those dates have not been given and as aforesaid, those stamps were not made available for the inspection of this Court. Failure to supply those copies to the petitioner would definitely affects his constitutional rights and, therefore, it is sufficient to quash and set aside the impugned order.

8. The second point, on which we are convinced, is the delay. It is to be noted that the last offence is stated to have been committed on 13.12.2023 and the detention order is passed on 27.03.2024. The delay point that has been taken is not explained by the detaining authority in the affidavit. It was tried to be submitted by the learned APP that the said point has not been taken specifically in the grounds to challenge the order. Since it is a law point it can be certainly argued. Further, point of delay is to be appreciated on the basis of facts. If the facts would have been placed on record by the respondents, then that could have been considered as answer to the points raised. We are convinced with the fact that delay cannot be counted from the date of commission of last offence, but sometimes we are required to consider when the statements of in-camera witnesses are recorded, verified and seen by the detaining authority and, therefore, the point would start from the date the detaining authority considers the statements i.e. records it, seen and verified on the statements. In this case, as aforesaid, the copies of those statements were never supplied to the petitioner. They are not produced here also and not made available for the inspection of the Court. Therefore, we do not know the date on which the

detaining authority had seen and verified those statements. At the cost of repetition, we would say that those dates are not forthcoming in the affidavit of the detaining authority and, therefore, we are constrained to observe that the impugned order suffers from delay.

9. Though the learned Advocate for the petitioner has tried to raise other points as regards representation and interpretation of Section 3(3) of the MPDA Act, yet we are not convinced with those points. However, we are convinced with the point that the State Government has not taken into consideration the representation submitted by the petitioner, but at the same time we make it clear that we are not in favour of that. While rejecting the representation, a detailed order has to be passed. In fact, it is sufficient compliance if the ultimate result is communicated, but here, in this case, there is no compliance of the mandatory provision about placing the representation before the Advisory Board.

10. Therefore, taking into consideration the above discussion on the three points stated, the writ petition deserves to be allowed. Hence, we pass the following order :-

ORDER

- I)** Writ Petition is allowed.
- II)** The detention order dated 27.03.2024 passed by respondent No.1 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-30, is hereby quashed and set aside.
- III)** Petitioner - Kunal Babulal Jaiswal shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm