



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1069 OF 2024

Sattar Jafar Tadavi
Age: 37 years, Occu.: Labour
R/o. Fardaur, Tq. Soyegaon,
Dist. Chh. Sambhajinagar

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Department of Home Affairs
Mantralaya, Mumbai.
2. The District Magistrate,
Chhatrapati Sambhajinagar.
3. The Superintendent of Police,
Chhatrapati Sambhajinagar.

.. Respondents

...
Mr. M. K. Bhosale, Advocate for the petitioner.
Mr. A. D. Wange, APP for the respondents – State.
...

**CORAM : SMT. VIBHA KANKANWADI &
SANDIPKUMAR C. MORE, JJ.**

DATE : 30 AUGUST 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. M. K. Bhosale for the petitioner
and learned APP Mr. A. D. Wange for the respondents – State.

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

3. Petitioner challenges the detention order bearing No.2024/MPDA/DET-05/DC-175 passed by respondent No.2 on 09.05.2024 and the approval order dated 05.07.2024 passed by respondent No.1 by invoking the powers of this Court under Article 226 of the Constitution of India.

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 offences were registered against the petitioner, the detaining authority has taken into consideration two offences i.e. Crime Nos.212 of 2023 and 33 of 2024. Both the offences are under Section 65(f) of the Maharashtra Prohibition Act, 1949. Both these cases are stated to be pending trial. 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 “M.P.D.A. Act.”). However, the grounds of detention would show that there was no subjective satisfaction arrived at by the detaining authority. It has been wrongly considered by the detaining authority that in both these offences charge-sheet has been filed. In fact, in discussion Nos.4(i) and 4(ii) of the grounds of detention, words used are, “after due investigation charge-sheet has been filed against you in the Judicial Magistrate First Class, Court Soygaon. Now, the said case is pending trial before the Court of Law.” In his additional affidavit-in-reply, respondent No.2 Deelip Veerpakshappa Swami, the District Magistrate, Chhatrapati Sambhajinagar, has stated that the investigation in these two matters is in progress, but the sponsoring authority have shown in the proposal that in all three cases were pending for the trial. Therefore, mistakenly, the status of all three cases were mentioned as pending for trial. This shows that there was no proper application of mind on the part of the detaining authority so also it was not considered that in the old case i.e. Crime No.120 of 2020, though it was shown as pending trial in the proposal and in the grounds of detention, the petitioner was already acquitted by the concerned Court on 04.09.2023. In

Crime No.212 of 2023 registered with Fardapur Police Station, so also in the other case, the CA report has been taken, yet there is no independent certificate of the medical expert that the said substance was dangerous to the health of people. In both the cases, the petitioner has been served with notice under Section 41(A) of the Code of Criminal Procedure. The in-camera statements are vague. The proposal was submitted on 08.04.2024 and the detention order was passed on 09.05.2024. Therefore, there is delay of one month in passing the detention order. Therefore, the impugned order is illegal and cannot be allowed to be sustained.

5. Per contra, learned APP strongly opposed the petition and submitted that there is absolutely no delay in passing the order. The proposal and the statements were seen by the detaining authority on 09.05.2024 and on the same day, the order of detention has been passed. The petitioner is a bootlegger as defined under M.P.D.A. He is indulging in bootlegging activity in a densely populated area of Parundi and in order to protect his illicit liquor business, he is indulged in the activities of abusing, threatening and assaulting the residents of Parundi and adjoining areas. Due to his customers, foul smell spread and it

creates an unhygienic atmosphere in the area of Parundi and adjoining areas. The people in the locality are put under constant fear, which has resulted in public order situation. The preventive action under Section 93 of the Maharashtra Prohibition Act was taken, however, it had no effect on his bootlegging activities. After the subjective satisfaction, the detaining authority has passed a reasoned order, which is then confirmed with the opinion of the Advisory Board and, thereafter, confirmed by the State Government on 05.07.2024.

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. In the present case, the first and the foremost fact that is required to be considered is that though the petitioner was acquitted from the case arising out of Crime No.120 of 2020 on 04.09.2023 that means before the proposal was submitted on 08.04.2024, yet the sponsoring authority had not put the proper data. So also, the sponsoring authority appears to have stated the present status in respect of Crime Nos.212 of 2023 and 33 of 2024 that they are pending for trial, that means the charge-sheet is filed. But, in fact, till today the charge-sheet is not filed in both the matters, yet, as aforesaid, the detaining authority, without going through the record, has stated that charge-sheet is filed against the petitioner before the learned Judicial Magistrate First Class. This shows total non application of mind and, therefore, it

cannot be said that there was subjective satisfaction. Another aspect to be noted is that the proposal was submitted on 08.04.2024, when it is stated that on the same day statement of in-camera witness 'A' was recorded. Statement of in-camera witness 'B' is recorded on 09.04.2024, that means a day after the proposal was submitted. Those statements came to be verified on 09.04.2024 and 10.04.2024 respectively. Further, it appears that Chapter Case No.03 of 2023 was proposed under Section 93 of the Maharashtra Prohibition Act, however, in view of the action taken under M.P.D.A., the said Chapter case was dropped. Intentionally, in the detention order, when the Chapter case was filed/proposal for Chapter case under Section 93 of Maharashtra Prohibition Act was submitted, has not been stated. If that would have been started prior to the present proposal, then such somersault is not permitted. It appears that though the charge-sheet was not filed in respect of Crime Nos.212 of 2023 and 33 of 2024, yet the CA reports in both the cases were collected and the copy of the same was provided to the petitioner. The question is when almost the investigation is over, then what prevented the investigating officer in those cases to file the charge-sheet. We have considered the FIR in both the matters to consider as to

whether there was sufficient material for arriving at the subjective satisfaction. In Crime No.212 of 2023 registered with Fardapur Police Station, the FIR is by a Police Constable Shri Narendra Khandare, wherein it is stated that two white colour can of 10 litre each were found in possession of the petitioner, but then it is stated that out of that 1 litre bottle was kept separate for Chemical Analysis. The panchanama also does not show how the sample was extracted. Under such circumstance, that is also one of the subjective satisfaction that was required to be considered by the detaining authority. In Crime No.33 of 2024, fifteen litre can was found in possession of the petitioner having 10 litre of liquor. Out of that, it is said that sample was taken in a bottle to the extent of 180 ml. Again in the panchanama, we are unable to get as to how the sample was extracted. Mere statements or facts are not sufficient to arrive at the subjective satisfaction.

8. As regards the in-camera statements are concerned, it is stated that those witnesses were threatened by the petitioner on the ground that they were giving information to the police or speaking against the business of the petitioner. They have considered and even the detaining authority says that the

petitioner is a dreaded criminal. In fact, except the offences under the Maharashtra Prohibition Act, there are no other offences against him. To brand the person as a bootlegger, there has to be a proper evidence. We do not want to give much importance to the delay point, since it can be sufficient that on the day the proposal and the statements were seen by the detaining authority, the order has been passed.

9. The second question that would arise as to whether the statements of the in-camera witnesses and the aforesaid two cases were to such an extent that it would create a problem of public order. To explain this concept, we may take help of the observations in ***Nevanath*** (*Supra*) made in paragraph No.32 :-

“32. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression ‘law and order’ is wider in scope inasmuch as contravention of law always affects order, ‘Public order’ has a narrower ambit, and could be affected by only such contravention, which affects that community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of ‘law and order’ and ‘public order’ is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the

maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: *Union of India v. Amrit Lal Manchanda*, (2004) 3 SCC 75].”

10. Thus, taking into consideration the above observations and the decisions of the Hon’ble Apex Court, at the most, the statements as well as offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

11. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I)** The Writ Petition is allowed.
- II)** The detention order dated 09.05.2024 passed by respondent No.2 bearing No.2024/MPDA/DET-05/DC-175 and the approval order dated 05.07.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner - Sattar Jafar Tadavi shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[SANDIPKUMAR C. MORE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm