



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1201 OF 2024

Shantaram Suka Borse
Age: 45 years, Occu.: Labour,
R/o. Indiranagar, Jalgaon (Khurd),
Tal. And Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department, Second Floor,
Mantralaya, Madankama Road,
Hutatma Rajguru Chowk,
Mumbai.

2. The District Magistrate,
Jalgaon, Dist. Jalgaon.

.. Respondents

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Mr. V. B. Patil, Advocate for the petitioner.

Mr. G. A. Kulkarni, APP for the respondents – State.

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**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

DATE : 13 SEPTEMBER, 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. V. B. Patil for the petitioner and
learned APP Mr. G. A. Kulkarni 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. The petitioner challenges the detention order dated 18.04.2024 bearing No. Dandapra/Kavi/MPDA/14/2024 passed by respondent No.2 as well as the approval order dated 26.04.2024 and the confirmation order dated 24.06.2024 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 orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, five offences were considered viz., (i) Crime No.112 of 2022, (ii) Crime No.11 of 2023, (iii) Crime No.29 of 2023, (iv) Crime No.87 of 2023 and (v) Crime No.193 of 2023. All these offences were registered with Nashirabad Police Station, District Jalgaon for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act. He submits that in all five offences have been considered, however, in none of those matters the petitioner was

arrested. The detaining authority has not considered the expert's opinion and only relied on the CA report for arriving at a conclusion that the substance that was seized was dangerous to the health of the public at large. The delay in passing the order has not been explained. Though it was wrongly mentioned that it is the appeal that has been preferred by the petitioner, in fact, it was the representation which was received by the Home Department of Government of Maharashtra on 14.05.2024. It was not placed before the Advisory Board. Even the subsequent applications by the son of the present petitioner for early hearing on the representation have not been considered and there is no explanation as to why the said representation has not been decided. Therefore, the impugned order is illegal and cannot be allowed to be sustained.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "MPDA Act"). The detaining authority has relied on the two in-camera statements and the subjective satisfaction

has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP relied on the affidavit-in-reply of Mr. Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. He relies on the Constitutional Bench decision in ***Attorney General for India etc. Vs. Amratlal Prajivandas and other, etc, [AIR 1994 SC 2179]***, wherein it has been held that there is no inconsistency or conflict between Article 22(5) of the Constitution of India and the second part of Section 5A of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the “COFEPOSA Act”). The Parliament is competent to create a legal fiction and it did so. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds.

He says that though the case was under COFEPOSA Act, the provisions are equally applicable to the detention matters.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) *Nevanath Bujji etc. Vs. State of Telangana and others*, [2024 SCC OnLine SC 367],

(ii) *Ameena Begum Vs. The State of Tamilnadu and Ors.*, [2023 LiveLaw (SC) 743];

(iii) *Kanu Biswas Vs. State of West Bengal*, [1972 (3) SCC 831] wherein reference was made to the decision in *Dr. Ram Manohar Lohia vs. State of Bihar and Ors.* [1966 (1) SCR 709];

(iv) *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta*, [1995 (3) SCC 237];

(v) *Pushkar Mukherjee and Ors. Vs. The State of West Bengal*, [AIR 1970 SC 852];

(vi) *Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors.*, (2000 (6) SCC 751) and ;

(vii) *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another*, [(1981) 4 SCC 647].

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 Bujji etc. (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. It is to be noted that the petitioner has been considered as bootlegger. The offences those have been considered are from 27.08.2022. The last offence that was registered against the applicant was on 07.11.2023. The order of detention has been passed on 18.04.2024. Therefore, it can be said that there was no live link between the offence that had allegedly occurred on 23.08.2022 and the order of detention. In the last offence, it appears that CA report has not been received. In other four offences, it is said that the percentage of the ethyl alcohol was 9%, 8%, 10%, and 20% respectively. There is no expert opinion placed on record and made available to the petitioner. On this point, reliance can be placed on the decision in ***Yogesh Bharat Rajput Vs. State of Maharashtra and others,***

[Criminal Writ Petition No.105 of 2024 decided by the Coordinate Bench of this Court on 27.03.2024], in which reliance has been placed on the decision in **Ganesh @ Nana Gangaram Koli Vs. State of Maharashtra and Ors., [Criminal Writ Petition No.1530 of 2023 decided by the Coordinate Bench of this Court on 09.02.2024]**. The decision in **Attorney General for India etc. (Supra)** will not be helpful to the respondents taking into consideration the facts of the case. We would like to further observe that if there are more grounds for detention as well as more grounds for challenging the said detention order, then it would be sufficient for the petitioner to show that in one or few grounds, the detaining authority erred. The most important question has not been answered by the detaining authority that the opinion formed by the District Magistrate does not indicate as to how the common law provisions were not sufficient to deter the petitioner from disturbing the public order. We are also taking note of the observation from **Sandeep Govind Pawar Vs. State of Maharashtra, Through its Additional Chief Secretary and Others, [2023 SCC OnLine 778]**, wherein it has been held that :-

“13. The fact that the petitioner has not been arrested in the latest two crimes and was merely served with a notice under Section 41 is indicative, as has been consistently held by this Court in the matters of Prashant Bharat Datar and Devidas Lalji Ade (Supra), latter of which was rendered relying upon the decision in the matter of Mallada K. Sri. Ram Vs. State of Telangana; 2022 SCC OnLine SC 424, that the Investigating Officer did not feel it necessary to arrest the petitioner – detenu and was satisfied in serving with notice under Section 41-A(1) of the Code of Criminal Procedure is indicative of the fact that his being at large may not be prejudicial to the public order.”

Further, the record shows that the statements of in-camera witnesses ‘A’ and ‘B’ were recorded on 01.01.2024. It appears that those statements were got verified by Sub Divisional Police Officer on 06.03.2024, but then the sponsoring authority appears to have submitted the proposal on 06.04.2024. Then Sub Divisional Police Officer forwarded it to Superintendent of Police on 06.04.2024 itself, but there is no explanation as to in between how the matter went to Sub Divisional Police Officer for verification of confidential statements. Further, there is no explanation as to why after the statements were recorded on 01.01.2024, it took about three months for even sending the proposal by the sponsoring authority. The detention matters

cannot be progressed as per the wish and whims of the police authorities.

8. Further, there is absolutely no explanation as to why the representation, which was though wrongly addressed as appeal dated 14.05.2024, was not placed before the Advisory Board. The matter was in fact placed before the Advisory Board on 09.05.2024 and the detenu was heard by the Advisory Board on 10.06.2024. Though the documents have been produced to show that the representation has been made by the petitioner, yet there is no counter affidavit by respondent No.1 stating that there is no representation received by them. Though the father of the petitioner has made communications to the Secretary, Home Department on 24.05.2024, 29.05.2024 and 11.06.22024 to consider the representation of the petitioner, yet it appears that the representation of the petitioner was not considered by the State. When the law gives opportunity to the petitioner to make representation and makes it compulsory to the detaining authority or the State Government to consider such representation and also put it before the Advisory Board, then that act must be carried in its true spirit. Whatever decision has been taken by the Advisory Board appears to be in ignorance of

receipt of representation, though it was properly made by the petitioner. Under this circumstance, a vital right has been withheld without any reasonable cause by the respondents which directly affects the personal liberty of the petitioner.

9. One more aspect that is to be considered is the statements of in-camera witnesses. Perusal of their statements would show that they have taken objection with the petitioner regarding his business of selling illicit liquor. Those statements are general in a sense that they were stating the petitioner that since young persons are consuming liquor, the entire generation's future is at stake and then why he is instrumental to the harassment to the women in the family of such persons, who consumes liquor by purchasing it from him. So they have posed as if they were the representatives of the society and giving advise to the petitioner, whereupon the petitioner reacted and gave him threat. Giving threat to the person will not amount to public order and therefore, these grounds do not justify the impugned order.

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 the 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 18.04.2024 bearing No. Dandapra/Kavi/MPDA/14/2024 passed by respondent No.2 as well as approval order dated 26.04.2024 and the confirmation order dated 24.06.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner – Shantaram Suka Borse shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm