



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1211 OF 2024

Vilas Waman Koli
Age: 38 years, Occu.: Labour,
R/o. Jalgaon Khurd,
Tq. And Dist. Jalgaon.

.. Petitioner

Versus

1. District Magistrate, Jalgaon,
District Jalgaon.
2. The State of Maharashtra,
Through the Additional Chief
Secretary, Govt. of Maharashtra,
Home Department Mantralaya,
Mumbai-32.
3. The Jail Superintendent,
Central Prison, Thane,
Dist. Thane.

.. Respondents

...
Mr. R. P. Patwardhan h/f Mr. Satej S. Jadhav, Advocate for petitioner.
Mr. N. R. Dayama, APP for the respondents/State.
...

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

DATE : 21 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. P. Patwardhan holding for
learned Advocate Mr. Satej S. Jadhav for the petitioner and
learned APP Mr. N. R. Dayama 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/13/2014 passed by respondent No.1 as well as the approval order dated 26.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.2, 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 i.e. Crime No.105 of 2022, Crime No.121 of 2022, Crime No.153 of 2022, Crime No.112 of 2023 and Crime No.192 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, 1949. Learned Advocate for the petitioner submits that even the stale cases have been considered by the detaining authority.

The last offence is stated to be committed on 07.11.2023 and the grounds of detention have been passed on 18.04.2024. Even the statements of in-camera witnesses 'A' and 'B' are taken on 21.02.2024 and 23.02.2024 respectively, still the proposal is submitted on 06.04.2024. Therefore, there is delay in passing the impugned order, which is not explained by the detaining authority. In respect of last offence i.e. Crime No.192 of 2023, it appears that the CA report has not been received, as it is not stated how much percentage of ethyl alcohol was found in the substance. Therefore, in fact, the material placed before the detaining authority has not been considered by him properly and, there was no subjective satisfaction arrived at, before passing of the order or to arrive at the conclusion, that the petitioner is a bootlegger.

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 relies on the affidavit-in-reply of respondent No.2, Mr. Ayush Prasad, the District Magistrate, Jalgaon and submits that he has explained as to how he had arrived at the subjective satisfaction to consider that the petitioner is a bootlegger. There is absolutely no delay in passing the order, as the proposal was sent on 06.04.2024. It was forwarded by Superintendent of Police on 10.04.2024 and the detention order has been passed on 18.04.2024. The Advisory Board has given its opinion on 28.05.2024, which supports the decision. The material before the detaining authority was sufficient to arrive at a conclusion that the petitioner was undertaking bootlegging activities and the liquor that was seized from him in the earlier matters contain ethyl alcohol. The percentage varied between 11% to 23% in respect of those cases, which were considered for passing the impugned order. Further, the statements of in-camera witnesses 'A' and 'B' show that ordinary law would not have curtailed the bootlegging activities of

the petitioner. Even the preventive action that was taken in the past against the petitioner had not curbed his activities. Therefore, no fault can be found in the impugned order.

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 (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. The first and the foremost fact that is required to be considered is that there should be a live link to arrive at a conclusion that the detenu is carrying out any bootlegging activity or is a dangerous person. It appears that the petitioner is involved in about nine offences from 07.01.2021. Respondent No.2 has considered in all five offences to arrive at a conclusion that the petitioner is doing bootlegging activities. Crime No.105 of 2022 came to be registered on 20.08.2022, Crime No.121 of 2022 was registered on 03.09.2022, Crime No.153 of 2022 was registered on 12.11.2022, Crime No.112 of 2023 was registered on 26.08.2023 and it appears that CA report in respect of these four matters was before the detaining authority, which showed that the percentage of the ethyl alcohol in the substance therein

is 12%, 14%, 23% and 11% respectively. The last offence is stated to have been committed and registered on 07.11.2023 i.e. Crime No.193 of 2023. The CA report was not before the detaining authority on the date of the passing of the order. Therefore, how much percentage of ethyl alcohol was found therein could not have been gathered by respondent No.2. Now, taking into consideration the date of the impugned order i.e. 18.04.2024 and as in respect of last offence no CA report was received, the detaining authority could have relied only on Crime No.112 of 2023 registered on 28.06.2023 to consider that there was ethyl alcohol found in the substance seized in the matter. That means, in respect of the activity which had taken place more than a year ago the detaining authority was considering whether to detain the petitioner or not. Therefore, we hold that there was in fact no live link which could have been considered by respondent No.2.

8. Perusal of the in-camera statements would show that even the original, which was opened from a sealed envelope, does not contain the names of the witnesses and even the portion of signature is also hidden with whitener. When the said document ordinarily should be in the possession of the detaining authority,

why the name should be hidden, is a question. Further, the first and the third paragraph in both the statements is copy paste. Those confidential statements were taken on 21.02.2024 and 23.02.2024 respectively, still the sponsoring authority appears to have forwarded/submitted the proposal on 06.04.2024 and there is no explanation by anybody in respect of this delay. We are in fact unable to get the track as to where the proposal went after it was submitted on 06.04.2024, yet the statements would show that the Sub Divisional Police Officer, Jalgaon Division, Jalgaon had verified it on 11.03.2024. Then the said link ought to have been explained as to when again it went back to the sponsoring authority i.e. Police Inspector, Nashirabad Police Station. The Superintendent of Police, Jalgaon forwarded the said proposal on 10.04.2024 to the District Magistrate. He appears to have verified those statements on 13.04.2024 and 16.04.2024 respectively and the detention order has been passed on 18.04.2024. Certainly, there was initial delay in the proposal itself. Further, in all the matters it can be seen that the petitioner has been given notice under Section 41-A(1) of the Code of Criminal Procedure. This aspect ought to have been properly considered. There is no subjective satisfaction to the fact that the ordinary law would not

have curtailed the bootlegging activities of the petitioner. Repetition of crime after some interval cannot be considered necessitating the detention of a person. Why no action as cancellation of bail was undertaken is also not explained and, therefore, we hold that, in fact, there was no subjective satisfaction arrived at or the material before the detaining authority was not sufficient to arrive at a conclusion that the public order was disturbed or likely to be disturbed.

9. 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.

10. 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/13/2024 passed by respondent No.1 as well as the approval order dated 26.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner - Vilas Waman Koli 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