



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1628 OF 2024

Magan Murlidhar Karwale
Through his wife
Rupali Magan Karwale,
Age: 30 years, Occu.: Labour,
R/o. Atwade, Tq. Raver,
Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department (Special)
Mantralaya, Mumbai-32.
2. The District Magistrate
Collector Office, Jalgaon.
3. The Superintendent
Central Prison,
Bhaykheda, Arther Road,
Chinchpokali Mumbai-4000027

.. Respondents

...

Mr. A. J. Patil, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
R. W. JOSHI, JJ.**

DATE : 25 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. J. Patil for the petitioner and
learned APP Mr. V. K. Kotecha 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 dated 18.07.2024 bearing No. Dandapra/Kavi/M.P.D.A./24/2024 passed by respondent No.2 as well as the approval order dated 25.07.2024 and the confirmation order dated 30.08.2024 passed by respondent No.1,k 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.100 of 2020, Crime No.434 of 2021, Crime No.179 of 2022, Crime No.398 of 2023 and Crime No.77 of 2024. All these offences were registered with Raver 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 in respect of last

offence which is considered under the caption “Details of offences registered recently within six months”, the detaining authority had taken note of Crime No.77 of 2024 registered under Section 65(e) of the Maharashtra Prohibition Act, 1949, however, on the date of passing the detention order, the CA report was not received in respect of the said offence. He further submits that the detaining authority has considered old and stale cases to come to the conclusion that the petitioner is a bootlegger. There was no live link in respect of other four offences, which were also considered. Further, there was no opinion of an expert medical officer obtained to state that the said amount of ethyl alcohol alleged to have been found in the liquor that was seized; was dangerous to the health of people at large. The statements of in-camera witnesses are stereotyped. Further, action was taken under Section 93 of the Maharashtra Prohibition Act, 1949 against the petitioner, however, it was not taken to the logical end. This shows that the action against the petitioner was predetermined. He further submits that there is considerable delay in passing the order, which has not been explained by the respondents. 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, wherein he has explained as to how he had arrived at the subjective satisfaction to consider that the petitioner is a bootlegger. Further, the opinion of the Advisory Board would clearly show that each and every aspect has been considered to state that there was material before the District

Magistrate for passing the detention order. Further, the statements of in-camera witnesses 'A' and 'B' show that the 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) *Nenavath 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 ***Nenavath Bujji (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. As aforesaid, the detaining authority had considered the aforesaid five offences and two in-camera statements. Perusal of these cases would show that the CA reports have been received in respect of first three offences and percentage of ethyl alcohol that was found was 42%, 41% and 10% respectively. The detaining authority has not considered that in respect of last offence i.e. Crime No.77 of 2024, CA report was not received. There was no opinion of any expert medical officer certifying that the seized liquor would have been injurious or harmful to human consumption. In fact, there was delay in

passing the detention order and it has not been properly explained by the detaining authority. When there is absolutely no explanation for the delay, then it will have to be held that there was absolutely no subjective satisfaction arrived at by the detaining authority. The impugned order states that action under Section 93 of Maharashtra Prohibition Act, 1949 was taken against the petitioner, which prescribes for demand of security for good behaviour to be taken from such person. Section 93 (1) of the said Act empowers a District Magistrate or a Sub-Divisional Magistrate, whenever he receives information that any person within the local limits of his jurisdiction habitually commits or attempts to commit or abets the commission of any offence punishable under this Act, such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, as the Magistrate may direct. If it would have been taken to the logical end, the Magistrate i.e. respondent No.2 was entitled/empowered to take such bond of good behaviour maximum for a period of three years. Further, sub-section (2) of Section 93 of the said Act prescribes that the provisions of Code of Criminal Procedure would be applicable to any proceedings under sub-section (1) of

Section 93 as if bond referred to therein were a bond required to be executed under Section 110 of the said Code. Section 110 of the Code then prescribes the procedure for breach of such bond. That means, there is in built mechanism in the Maharashtra Prohibition Act to curtail the activities of a habitual offender. These proceedings under the Act were not taken to the logical end. Therefore, the statement by respondent No.2 that ordinary law would not have curbed the activities of the petitioner and only the detention order would have taken care of said activities in the public interest cannot be upheld.

8. As regards the in-camera statements are concerned, they have been considered and even the detaining authority says that the petitioner is a bootlegger. 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. Giving threat to the person will not amount disturbance to the public order and, therefore, these grounds do not justify the impugned order.

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 stands allowed.

II) The detention order dated 18.07.2024 bearing No. Dandapra/Kavi/M.P.D.A./24/2024 passed by respondent No.2 as well as the approval order dated 25.07.2024 and the confirmation order dated 30.08.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Magan Murlidhar Karwale shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm