



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1678 OF 2024

Raju s/o Sonu Gadage
Age: 43 years, Occu.: Nil,
R/o. Savali, Tq. Biloli,
District Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Nanded, District Nanded.
3. The Superintendent of Jail,
Central Prison, Aurangabad.

.. Respondents

...
Mr. U. B. Bilolikar, Advocate for the petitioner.
Mr. A. D. Wange, APP for the respondents/State.

...

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

DATE : 04 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. U. B. Bilolikar 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. The petitioner challenges the detention order dated 15.07.2024 bearing No. 2024/RB-1/Desk-2/T-4/MPDA/CR-47 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, 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, four offences were considered i.e. **(i)** Crime No.13 of 2024 registered with Inspector, State Excise, Biloli Division, Nanded, **(ii)** Crime No.66 of 2024 registered with Inspector, State Excise, Flying Squad, Nanded, **(iii)** Crime No.52 of 2024 registered with Inspector, State Excise, Biloli Division, Nanded and **(iv)** Crime No.155 of 2024 registered with Inspector, State Excise, Flying Squad, Nanded. All these offences were registered under Section

65(e) of the Maharashtra Prohibition Act, 1949. Learned Advocate for the petitioner submits that there was no subjective satisfaction arrived at by the detaining authority. The detaining authority has not considered the expert's opinion and only relied on the CA reports for arriving at a conclusion that the substance that was seized was dangerous to the health of the public at large. In all the cases, the petitioner has been served with notice under Section 41(A) of the Code of Criminal Procedure. Further, Chapter Case No.16 of 2022 was proposed against the petitioner, however, in view of action taken under M.P.D.A., said chapter case was dropped. The statements of in-camera witnesses 'A' and 'B' would show that at the most law and order situation would have been created. Therefore, the impugned order is illegal and cannot be allowed to sustain.

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 is relying upon the affidavit-in-reply filed by Mr. Abhijit Raut, District Magistrate, Nanded. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the conclusion that the petitioner is a bootlegger. The subjective satisfaction was arrived at on the basis of CA report as well as in-camera statements and the contents of the FIR. In all, four offences were considered along with the two in-camera statements. 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 30.08.2024.

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

taken note of four offences i.e. Crime No.13 of 2024 dated 31.01.2024, Crime No.66 of 2024 dated 01.03.2024, Crime No.52 of 2024 dated 17.04.2024 and Crime No.155 of 2024 dated 13.05.2024 and two in-camera statements. As regards Crime No.13 of 2024 is concerned, when the informant was on patrolling duty with staff, he received information that the petitioner is illegally stocking and selling of Toddy/Sindhi in his residence. Upon receipt of said information, raid was effected on the house of petitioner and it was found that Toddy/Sindhi worth Rs.1,160/- were illegally stored in the house of petitioner. This entire story would show that general public was not involved. When public was not involved, the ordinary law would have taken its course. As regards other three offences are concerned, they are on the same line. In all the cases raid is effected on the house of the petitioner, where general public was not involved. Further, it appears that Chapter Case No.16 of 2022 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. 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. Section 93 of the Maharashtra Prohibition Act, 1949 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 the said procedure 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 inbuilt 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. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, they are stereotyped and the allegations made in statements are vague. At the most law and order situation would have been created.

8. Reliance can be placed on the recent decision of the Hon'ble Supreme Court in ***Arjun s/o Ratan Gaikwad Vs. The State of Maharashtra and others, [Criminal Appeal (Arising out of SLP (Crl.) No.12516 of 2024 dated 11.12.2024 :: 2024 INSC 968]***, wherein it has been observed that :-

“16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.”

Here also, not on a single occasion, the petitioner was arrested. In all the aforesaid cases, the petitioner was served with notice under Section 41(A) of the Code of

Criminal Procedure.

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 15.07.2024 bearing No. 2024/RB-1/Desk-2/T-4/MPDA/CR-47 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 – Raju s/o Sonu Gadage shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm