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**Corrections have been carried out in view of speaking to
minutes order dated 13.02.2024**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1530 OF 2023

Ganesh @ Nana Gangaram Koli,
Age : 37 Years, Occu. : Labourer,
R/o Koliwada Gat No. 11,
Rameshwar Colony, Jalgaon,
Tal. & District Jalgaon
Through his mother
Jijabai Gangaram Koli,
Age 58 years, Occu. : Household. .. Petitioner

Versus

1. The State of Maharashtra,
(Through Addl. Chief
Secretary to Government of
Maharashtra, Mantralaya,
Home Department Mantralaya,
Mumbai).
2. The District Magistrate,
Jalgaon, District Jalgaon.
3. The Superintendent of Jail
Thane Central Prison, Thane.
4. The Secretary,
Advisory Board (MPDA),
Mantralaya, Mumbai. .. Respondents

Shri Deepak D. Choudhari, Advocate for the Petitioner.
Shri V. K. Kotecha, A.P.P. for the Respondent Nos. 1 to 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 23.01.2024
JUDGMENT PRONOUNCED ON : 09.02.2024

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent of the litigating sides heard finally at the admission stage.

2. The petitioner is invoking the jurisdiction of this Court under Article 226 and 227 of the Constitution of India to challenge the order of detention dated 18.09.2023 passed U/Sec. 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for the sake of brevity and convenience hereinafter referred as “Act”).

3. The impugned order is passed by the respondent No. 2 authority considering the criminal antecedents comprising of seven offences registered against the petitioner, three cases of preventive action taken against him and two statements of anonymous witnesses. The proposal was forwarded to the respondent No. 2/The District Magistrate, Jalgaon on 07.09.2023. On 18.09.2023 the impugned order was passed. On 25.09.2023 the respondent No. 1 approved impugned order U/Sec. 3(2) of the Act. Advisory board considered the proposal of the detention of the petitioner. By order dated 31.10.2023 order of detention was

confirmed. It reveals from the record that the petitioner was committed to the prison on 19.09.2023.

4. Impugned order is founded on following criminal antecedents of the petitioner.

Sr. No.	Crime No.	Offences U/Sec.	Date of registration of offence	Case status
01.	3066/2019	U/S. 12(a) of the Maharashtra Prevention of Gambling Act, 1887.	29.04.2019	Proved (Fine of Rs. 300/- imposed)
02.	6014/2020	U/Sec. 188 and 269 of the I. P. Code and Sec. 65(e) of the Maharashtra Prohibition Act, 1949.	12.05.2020	Pending trial
03.	6014/2021	Sec. 65(e) of the Maharashtra Prohibition Act, 1949.	07.05.2021	Pending trial
04.	6019/2021	Sec. 65(e) of the Maharashtra Prohibition Act, 1949.	23.06.2021	Pending trial
05.	6031/2021	Sec. 65(e) of the Maharashtra Prohibition Act, 1949.	11.08.2021	Pending trial
06.	6007/2023	Sec. 65(e) of the Maharashtra Prohibition Act, 1949.	01.03.2023	Pending trial
07.	08/2022	As per Section	08.04.2022	Ramanand

		144(2) of Criminal Procedure Code, 1973 extened for a period of ten days from Jalgaon city		Nagar Police Station.
08.	01/2022	As per Section 93 of the Maharashtra Prohibition Act, 1949	17.08.2022	Ramanand Nagar Police Station.
09.	01/2023	As per Section 93 of the Maharashtra Prohibition Act, 1949	19.06.2023	Ramanand Nagar Police Station.
10.	6024/2023	Sec. 65(e) of the Maharashtra Prohibition Act, 1949.	30.06.2023	Under police investigation.

5. The learned counsel for the petitioner seeks to challenge the impugned order on following grounds :

A. The respondent No. 2/Detaining Authority failed to consider that the petitioner has been acquitted from case bearing S.C.C. No. 515 of 2022 by judgment and order dated 18.07.2023 which is not considered and has affected the subjective satisfaction.

B. The petitioner was being issued notice U/Sec. 41(A-1) of the Code of Criminal Procedure (for short "Cr. P. C.") in pursuance of five offences registered against him, meaning thereby his activity was not found to be serious requiring his arrest. The involvement of the petitioner is not in serious offences which is not considered.

C. There is no live link between the action of detention order and proposed ground of detention as the last registered offence was on 30.06.2023 and the proposal was forwarded on 07.09.2023.

D. The reports of the chemical analysis collected during the investigation of the offences registered against the petitioner do not spell out the opinion that the consumption of contraband is injurious to human health, still a finding is recorded by the detaining authority in paragraph No. 11 which is without any basis.

E. Considering the record pitted against the petitioner there was no necessity to take drastic action of detention. Regular criminal courts could have taken care of the activities of the petitioner.

F. Lastly there is no offence registered under Chapter XVI and XVII of the Indian Penal Code against the petitioner. The statements of the two anonymous witnesses are not reliable.

6. Per contra, the learned Assistant Public Prosecutor would vehemently oppose the submissions of the petitioner in the following manner :

a. The criminal antecedents against the petitioner have been properly appreciated which shows the tendency of the petitioner

to commit offences repeatedly.

b. The petitioner has committed last offence on 30.06.2023 and immediately proposal is prepared and forwarded to the detaining authority and action is initiated. There is no delay.

c. The petitioner without holding necessary licence has been indulging in selling liquor and creating terror which is affecting public order.

d. There is cogent material against the petitioner including two statements of the witnesses to form subjective satisfaction that he is a bootlegger.

e. The detaining authority has considered the reports of chemical analysis collected during the course of investigations and has arrived at right conclusion.

7. We have considered the rival submissions of the litigating sides advanced across the bar. With their assistance we have gone through the relevant papers produced on record which form the material for taking preventive action against the petitioner.

8. The record reveals that in all there are seven offences registered against the petitioner. He is convicted in CR. No. 3066/2019 of Ramanand Nagar Police Station. The prosecution in six cases is pending. He was served with the notice U/Sec. 41(A-1) of the Cr. P. C. in four offences. The above referred

offences are U/Sec. 65(e) of the Maharashtra Prohibition Act. None of the offences is under the provisions of the Indian Penal Code or any other criminal law. On three occasions preventive action has been taken against the petitioner.

9. The learned counsel for the petitioner has placed on record during the course of arguments judgment and order dated 18.07.2023 passed by the learned Judicial Magistrate First Class, Jalgaon in S.C.C. No. 515 of 2022 acquitting the petitioner for the offence bearing Cr. No. 6019/2021 U/Sec. 65(e) of the Maharashtra Prohibition Act. It has been recorded by the detaining authority in paragraph No. 5.2 of the grounds of detention that S.C.C. No. 515 of 2022 is pending. The petitioner has been acquitted by the reasoned order on 18.07.2023. The detaining authority should have considered the reasons for acquittal which are relevant to form subjective satisfaction.

10. It was the duty of the petitioner also to point out the detaining authority an order of acquittal rendered in S.C.C. No. 515 of 2022. We have not been shown that any such attempt has been made by the petitioner. Though the order of acquittal is a relevant record, the detention order cannot vitiate on that sole ground. This can be taken to be one of the mitigating circumstances.

11. The learned counsel for the petitioner has drawn our attention to the findings recorded in paragraph No. 11 of the grounds of detention. The respondent No. 2 detaining authority

has formed subjective satisfaction on the basis of reports of the chemical analysis of samples collected during the course of investigation of various offences. It has been held that consumption of the contraband would be hazardous to the human health and harmful for the human life. We have gone through the reports of the chemical analysis produced on record at page Nos. 130, 148, 169 and 186. None of the reports spell out any opinion expressed by the analyzer that contraband would be harmful to human life and hazardous to human consumption. Despite that the detaining authority has recorded a finding against the petitioner.

12. The detaining authority is not an expert person to come to the conclusion in the absence of any expert's opinion. The detaining authority should have secured experts opinion in that regard before arriving at any conclusion in para No. 11. We are of the considered view that the subjective satisfaction suffers from perversity. We are fortified in our view, in view of the ratio laid down in **judgment dated 19.10.2023 in Criminal Writ Petition No. 1284 of 2023** in the matter of **Prakash Chandrakant Kanjar Vs. The State of Maharashtra and another** and **judgment dated 25 October 2023 in Criminal Writ Petition Stamp No. 15879 of 2023** in the matter of **Satyavan Shakha Rathod Vs. Commissioner of Police, Pune City and others.**

13. The petitioner has raised next ground of want of live link. It transpires from the record that offence bearing Cr. No.

6024/2023 was registered on 30.06.2023 against the petitioner with Ramanand Nagar Police Station. The proposal for taking action against the petitioner was submitted to the respondent No. 2 detaining authority on 07.09.2023. Thereafter on 18.09.2023 order of detention was passed. There is time span of more than two months from registration of last offence and forwarding of proposal. The affidavit in reply filed by the respondent No. 2 does not provide any explanation for this delay. It is in-comprehensible why period of more than two months was consumed. The live link is snapped between the order of detention and the material for detention.

14. It is submitted by the petitioner that there was no adequate material to warrant an action U/Sec. 3(2) of the Act. No offence has been registered against the petitioner under the provisions of either Indian Penal Code or other than the Maharashtra Prohibition Act and the Maharashtra Prevention of Gambling Act. In camera statements of the witnesses refer to the overt acts, but no offence is registered against the petitioner. In this regard we are guided by the principles laid down in Para No. 16 of the **judgment dated 03 April 2023 in the matter of Sandip Govind Pawar Vs. The State of Maharashtra and others in Criminal Writ Petition No. 172 of 2023**. It reads as follows :

“16. As is mentioned herein-above, not even a single offence has ever been registered against the petitioner under the Indian Penal Code. Not even any report of previous incident of threatening was lodged by anybody. Statements of

these witnesses were got verified from a subordinate officer but there is nothing in the grounds furnished to the petitioner by the District Magistrate to demonstrate as to if he has independently verified genuineness of the statements which has also been consistently held to go to the root of the validity of such orders.”

15. Having considered the material pitted against the petitioner on the touch stone of principles laid down in above judgments, we are of the considered view that the findings recorded by the detaining authority that it was necessary to take action under the Act to curb the criminal activities is unsustainable. The drastic action under the Act is unwarranted in the present matter. The tendency of the petitioner to commit offence under the Maharashtra Prohibition Act can be taken care of by ordinary law.

16. Though, learned A. P. P. has not pressed into service the application of Section 5A of the Act, we have given our consideration to that aspect also. We have recorded our reservations for the subjective satisfaction arrived at by the detaining authority. There is unexplained delay in taking action against the petitioner. The cumulative effect is that there is perversity in the exercise of the jurisdiction of the detaining authority when the personal liberty of the detainee is at stake and a draconian action is proposed against him. We do not find that Section 5A of the Act would be an impediment in quashing the impugned order. We therefore pass following order.

O R D E R

- I. The criminal writ petition is allowed.
- II. The impugned order dated 18.09.2023 passed by the respondent No. 2/District Magistrate, Jalgaon is quashed and set aside and the petitioner shall stand released from the detention, if not required in any other offence/case.
- III. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/Jan. 24