



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

Criminal Writ Petition No. 1578 / 2023

Vishwas Arun Garunge

Age : 42 years,

R/o Samtanagar,

Jalgaon, Taluka and District Jalgaon

(Presently detained at Nagpur

Central Prison, Nagpur).

...Petitioner

Versus

1. The District Magistrate,
Jalgaon.

2. State of Maharashtra
Through Secretary,
Home Department (Spl),
Mantralaya, Mumbai.

3. The Superintendent,
Nagpur Central Prison,
Nagpur.

..Respondents

— — —
Advocate for the Petitioner : Mr. Rupesh A. Jaiswal

A.P.P. for Respondents /State : Mr. K. N. Lokhande

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

RESERVED ON : 7 MARCH 2024

PRONOUNCED ON : 14 MARCH 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. The petitioner is assailing order of detention dated 31.08.2023 passed by the respondent no.1/District Magistrate, Jalgaon under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience).

3. The detaining authority has arrived at subjective satisfaction that the petitioner is dangerous person as well as bootlegger on the basis of following criminal antecedents pitted against him.

SR. NO.	POLICE STATION	CRIME NO.	DATE OF REGISTRATION	SECTIONS	PRESENT STATUS
1	Ramanand Nagar	295/2021	17/10/2021	Under Section 65 (e) of Maharashtra Prohibition Act, 1949	Pending trial
2	Ramanand Nagar	148/2022	31/05/2022	Under Section 65 (e) of Maharashtra Prohibition Act, 1949	Acquittal
3	Ramanand Nagar	344/2022	21/11/2022	Under Section 65 (e) of Maharashtra Prohibition Act, 1949	Pending trial
4	Ramanand Nagar	29/2023	07/02/2023	Under Section 65 (e) of Maharashtra Prohibition Act, 1949	Pending trial
5	Ramanand Nagar	227/2023	03/07/2023	Under Section 65 (e) of Maharashtra Prohibition Act, 1949	Acquittal

DETAILS OF PREVENTIVE ACTION				
Sr.No.	Police Station	Registration Number	Date of Registration	Sections
1	Ramanand Nagar	09/2018	09/07/2018	As per Section 93 of Maharashtra Prohibition Act, 1949
2	Ramanand Nagar	05/2022	17/08/2022	As per Section 93 of Maharashtra Prohibition Act, 1949
3	Ramanand Nagar	07/2022	08/04/2022	As per Section 144(2) of Cr.P.C.
4	Ramanand Nagar	03/2023	20/06/2023	As per Section 93 of Maharashtra Prohibition Act, 1949

4. Learned Counsel for the petitioner formulates his submissions on following grounds :

- (i) There is delay in considering the representation and decision has not been conveyed.
- (ii) In the absence of expert's opinion or C.A. report subjective satisfaction is perverse.
- (iii) No statements of the complainant furnished to the petitioner.
- (iv) Translation of vital documents not furnished.
- (v) No material to hold petitioner "dangerous person", thereby casting doubt on subjective satisfaction.
- (vi) In-camera statements are vague and unreliable.
- (vii) There is no material to show activities of the petitioner are against public order.

5. Learned Counsel for the petitioner would tender on record written submissions alongwith judgments which he wants to rely upon. Additionally a compilation of the papers running into 401 pages which were served upon petitioner, is placed on record for our perusal.

6. Learned APP would oppose the submissions of the petitioner on the basis of affidavits-in-reply filed on 16.01.2024 and 01.03.2024. He tenders on record order of rejection dated 16.11.2023 to show that the representation was rejected and served on the detenue. It is being submitted that the subjective satisfaction is based upon intelligible reasoning and it cannot be faulted with. It is further being submitted that relevant documents have been supplied to the petitioner to enable him to make representation. All the documents are in Marathi language and the petitioner was able to understand the same. Lastly it is submitted that there is no violation of principles of natural justice and due procedure of law was followed before passing the impugned order.

7. We have considered submissions of both the sides carefully. We have gone through the pleadings of the parties as well as relevant documents. Undisputedly, in all five offences are pitted against the petitioner. All the offences are

under the provisions of Maharashtra Prohibition Act, 1949. Even the preventive actions are also under the Maharashtra Prohibition Act except case no.7/2022 under Section 144(2) of Cr.P.C. Additionally, two in-camera statements of the witnesses have also been considered by the detaining authority.

8. Impugned order was passed on 31.08.2023. Petitioner has been committed to prison on the same day. On the same day, a compilation comprising of grounds of detention and relevant documents running into 401 pages were served to him. On 12.10.2023, petitioner submitted a representation. It is the grievance of the petitioner that no decision was taken. During the course of the arguments, it is contended that the decision is taken belatedly. Learned APP has placed on record decision dated 16.11.2023, rejecting the representation. We find an acknowledgment of the petitioner on a letter dated 16.11.2023. We have also gone through affidavit-in-reply dated 01.03.2024. Paragraph no.2 of the sequence of events and elaborate procedure undertaken for considering representation have been stated. There is no challenge to it by filing any rejoinder. There is no reason to doubt the procedure adopted by the respondents in dealing with the representation.

9. In this regard, learned Counsel for the petitioner relies

upon judgment in the matter of **Digambar Vitthal Dagdade Vs. District Magistrate Latur and Ors.** in Criminal Writ Petition No.1736/2023. In that matter, representation was neither considered nor communicated to the detenue. We have expressly recorded facts in paragraph no.5 and our finding in paragraph nos. 10 to 12, that is not a scenario in the case in hand. Therefore we do not propose to follow view taken in that matter. We have no hesitation to record that the representation has been duly considered by the respondents/authorities and communicated to him.

10. It is a matter of record that in all five offences are pitted against the petitioner. The papers of investigation are placed on record. We have perused the papers of investigation which would indicate that in each offence the investigating agency has collected report of chemical analyzer. There are in all five reports shown to us by the petitioner which do not show any express opinion that consumption of the contraband would be hazardous to the public health. We have considered the finding recorded by the detaining authority in paragraph no. 11. On the basis of the reports of the chemical analysis collected during the course of investigation, it has been recorded that “the finding of ethyl alcohol in the water of the sample is hazardous for the consumption of general public and if it is consumed then it is harmful for human lives which may possibly cause serious ailments like jaundice,

accumulation of water in stomach, cancer. It may also deplete blood level in the body giving rise to the risk of life and death.”

11. The learned Counsel for the petitioner would submit that the finding recorded above is perverse because detaining authority is not an expert person. For that purpose, reliance is placed on following authorities :

- (i) District Collector, Ananthapur Vs. V. Laxmanna (2005)3 SCC 633 (Paragraph No. 7 and 8)
- (ii) Satyavan Shakha Rathod Vs. Commissioner of Police Criminal Writ Petition Stamp No.15879/2023 (Paragraph Nos. 15, 17 and 18)
- (iii) Prakash Chandrakant Kanjar Vs. State of Maharashtra Criminal Writ Petition No.1285/2023 (Paragraph Nos. 15, 17 and 23)
- (iv) Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra, Criminal Writ Petition No.1527/2023 (Paragraph Nos. 25, 26, 28, 29, 30 & 35)

12. We have considered the relevant paragraphs of the above authorities. To avoid the repetition, we are not reiterating the principles in the judgment. We have taken view in the matter of Dhanubai (supra). Relevant paragraph no.25 reads as follows :

“25. Learned Counsel for the petitioner submitted that the detaining authority

has recorded in paragraph no. 11 that the contraband seized from the petitioner in various offences is harmful to the human lives and considering the percentage of the alcohol, it is hazardous for human consumption. We have gone through the reports of the chemical analysis in respect of the liquid collected during the course of investigation of the respective offences under Section 65 of the Maharashtra Prohibition Act. We do not find that in any of the reports, there is a specific opinion of the analyzer that consumption of the liquid would be dangerous to human lives. We have not been pointed out any material on record on the basis of which, the subjective satisfaction has been arrived at by the detaining authority. The respondent no.2/detaining authority is not an expert. To come to conclusion that consumption of contraband having particular percentage of alcohol would be hazardous to public lives, need an expert's opinion. In the absence of the exercise required to be undertaken by the detaining authority to confirm from the experts, the consequences and repurcation recorded in paragraph no.11 of the grounds of detention are unsustainable and perverse."

13. We are of the considered view that the subjective satisfaction of the detaining authority in the case in hand is perverse because there is no material on record to indicate that consumption of the contraband found with the petitioner was injuries to public health. The material pitted against the petitioner falls short to hold him as a bootlegger because the subjective satisfaction is perverse.

14. We have considered relevant documents of the offences

pitted against the petitioner. We do not find that the statements of the complainant in each complaint having been incorporated in the compilation served upon the petitioner. On that basis, a submission is made that the petitioner was unable to make effective representation. Learned APP has pointed out paragraph no.13 of affidavit-in-reply dated 16.01.2024. It would indicate that the papers of the investigation and the gist of the offences would disclose the name of the complainants who were the police personnel. It is further stated no separate statement of the complainant has been recorded.

15. We find that almost all the relevant papers of the offences considered by the detaining authority were given to the petitioner. It is not demonstrated to us as to what is the prejudice caused to the petitioner for not supplying specific statements of the complainant recorded under Section 161 of the Cr.P.C. First Informant Report of each offence are on record. We do not see any prejudice having been caused to the petitioner so as to affect his right under Article 22(5) of the Constitution of India or as to how he was unable to make effective representation.

16. Learned Counsel for the petitioner would rely upon judgment in the matter of **State of Uttar Pradesh Vs. Kamal**

Kishore Saini, 1987 CJ(SC) 817. We have considered paragraph no.5 and 14. In that matter, the detenu was facing action under National Security Act and he was not being supplied the relevant documents in support of the grounds except FIR and copies of extract of charge-sheet submitted in the cases pitted against him. The case in hand is distinguishable on facts. It is a matter of record as much as 401 papers have been served upon the petitioner. Therefore the judgment cited may not enure to the benefit of the petitioner. Another judgment cited is in the matter of **Akash Anil Mudgal Vs. Commissioner of Police Solapur & Ors.** We have considered paragraph no.15 to 20. It was a matter in which the detenu was belatedly supplied the documents, so much so that the papers were supplied when matter reached Court of law. Present case shows that the documents were served upon the petitioner on 31.08.2023. We do not propose to rely upon the ratio laid down in the judgment. We do not find any merit in the submissions of learned Counsel in this regard.

17. Next grievance of the petitioner is that he is uneducated and studied up to 7th Standard. It is further contended that he is able to read and write Hindi language only. Learned APP would point out paragraph no.10 of the affidavit-in-reply to challenge the submissions of the petitioner. It is contended

by learned APP that almost all the documents are in Marathi language. It is further submitted that the petitioner understands Marathi and in no way his right guaranteed under Article 22(5) of the Constitution of India has been prejudiced. The stand has not been controverted by the petitioner.

18. Our attention is invited to school leaving certificate of the petitioner. It appears that petitioner has studied up to 7th Standard and is unable to understand English language. We have gone through the relevant papers served on the petitioner alongwith grounds of detention. As stated earlier in the present matter five offences are pitted against him and all of them are under the provisions of Maharashtra Prohibition Act. There are five reports of chemical analysis collected during the course of investigation in respective offences. We find that no translation in Marathi is supplied to him. Those are the vital documents. The detaining authority has recorded finding in paragraph no. 11 on the basis of those documents. In such scenario, it is imperative for the respondents to supply the translated copies.

19. Learned Counsel for the petitioner seeks reliance in the judgment of **Yogesh Nandu Pujari Vs. Commissioner of Police, Thane & Ors.**, 2013 ALL MR (Cri) 1779. The relevant

paragraph no.8 and 9 read as follows :

“8. A priori, it would necessarily follow that the injury certificates Exhibit – 'F' collectively, which formed part of the compilation of documents accompanying the grounds of detention served on the detenu, were relied upon by the Detaining Authority to form his subjective satisfaction. The concomitant of this finding is that said documents are vital documents and will have to be considered as "ground" within the expansive meaning of expression "grounds of detention". This legal position, in our opinion, is no more res integra. The Apex Court in the case of Khudiram Das Vs. the State of West Bengal and Ors. (1975) 2 SCC 81 had occasion to answer the same. The Apex Court has expounded the meaning of expression "grounds". It is held that it means all the basic facts and "materials which have been taken into account" by the Detaining Authority in making the order of detention and on which, therefore, the order of detention is based.” This statement of law is enunciated on the basis of the reported cases and Authorities referred to in Paragraph 6 of the reported decision.”

“9. In our opinion, therefore, the Petitioner is justified in contending that his right to make effective representation has been abridged within the meaning of Article 22(5) of the Constitution of India, as has been expounded by the Apex Court in catena of decisions. We do not intend to multiply the Authorities cited before us by both the sides, except to mention that in the fact situation of the present case, we have no hesitation in taking the view that the injury certificates, in the words of the Detaining Authority himself, were relied upon documents for forming subjective satisfaction that it is imperative to detain the Petitioner to prevent him from indulging in prejudicial activities in future. Accordingly, this Petition ought to succeed.”

20. Further reliance is placed upon the judgment in the matter of **Ketan Gorakh Darekar Vs. Commissioner of Police, Pune City and Ors.** in Criminal Writ Petition Stamp No. 16438/2023. Paragraph No.8 is as follows :

“8. In the present case, it is not disputed that translation of the documents relied upon by the detaining authority was supplied to the petitioner in the Marathi language known to him, except for the injury certificate. The fact that the translation of the documents relied upon by the detaining authority was supplied to the petitioner in the Marathi language clearly shows that the detaining authority was aware that the petitioner was familiar with the Marathi language. It is not disputed that the injury certificate is relied upon by the detaining authority for recording subjective satisfaction to detain the petitioner. Hence, it was incumbent on the detaining authority to supply a Marathi translation of the injury certificate, which was in the English language. Thus, the non-supply of translation of the injury certificate in the present case has deprived the petitioner of making an effective and purposeful representation. Thus, there is an infringement of the petitioner’s right under Article 22 (5) of the Constitution of India, rendering the continued detention of the petitioner illegal and impermissible.”

21. Learned Counsel for the petitioner has rightly relied upon the judgments cited above. Petitioner was entitled to receive the translated copies, albeit we have recorded that finding of paragraph no.11, are perverse. We find substance in the submission of the learned Counsel for the petitioner in this regard.

22. Learned Counsel for the petitioner heavily criticizes the subjective satisfaction by inviting out attention to paragraph no.8 of the grounds of detention. It refers that the petitioner is held to be dangerous person as well as bootlegger. The definition of dangerous person is provided by Section 2(b)-1 of the Act. It contemplates offences falling under Chapter XVI and XVII of the Indian Penal Code or offences punishable under Chapter V of Arms Act, 1959. None of the offences pitted against the petitioner are either under IPC or Arms Act. All offences are under Maharashtra Prohibition Act, 1949. The detaining authority has committed perversity in holding petitioner to be a dangerous person. We have already recorded that subjective satisfaction to record the petitioner as a bootlegger, is perverse for want of expert's opinion. Additionally, we also find that there is no material on record to show that the criminal activity of the petitioner would be causing prejudice to the public order. The offences which are registered against the petitioner can be dealt with under ordinary penal laws. A drastic action under the MPDA Act is not warranted.

23. Learned Counsel for the petitioner would rely upon the judgment in the matter of Dhanubai @ Dhanno Yashvant Nettlekar (supra). Paragraph No. 30 is as follows :

“30. The grounds of objection of detention recorded by respondent no.2

shows that in paragraph no.8, it is recorded that the petitioner falls within the meaning of dangerous person as well as she is also branded as a bootlegger. We are of the opinion that there is material on record to suggest that petitioner can be branded as a bootlegger. But there is no evidence on record to bring her within purview of 'dangerous person'. The petitioner appears to be involved in a peculiar type of offence under the prohibition act. We do not find that any other offences registered against her under Indian Penal Code or any other criminal law."

24. We have to be consistent in our view. The petitioner has rightly pointed out judgment in the matter of Dhanubai (supra) which would apply to the case in hand. We have no hesitation to record that subjective satisfaction is perverse and patently illegal.

25. To sum up, though the submission of the learned Advocate for the petitioner on point no.1 and 3 is not legally sustainable, we accept the submissions on point nos.2, 4 and 5. Under these circumstances, we find that impugned order is unsustainable and is liable to be quashed. We are inclined to allow the petition. Hence, we pass following order :

ORDER

- (i)** The Criminal Writ Petition is allowed.
- (ii)** The order of detention dated 31.08.2023 passed by the

respondent no.1/District Magistrate, Jalgaon is quashed and set aside.

(iii) The petitioner shall be set at liberty.

(iv) Rule is made absolute in the above terms.

(SHAILESH P. BRAHME)
JUDGE

(MANGESH S. PATIL)
JUDGE