



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

Criminal Writ Petition No. 1633 / 2023

Smt. Akkabai Suresh Chavan (Detenue)

Age : 40 years, R/o Labour,

R/o At post Sangavi Village,

Taluka : Chalisgaon, District Jalgaon.

...Petitioner

Versus

1. State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai.
2. The District Magistrate, Jalgaon
Collector Office, Jalgaon,
Taluka & District Jalgaon.
3. The Superintendent of Police, Jalgaon,
S.P. Office, Jalgaon,
Taluka & District Jalgaon.
4. The Police Inspector,
Chalisgaon Rural Police Station,
Taluka : Chalisgaon, District Jalgaon.
5. The Superintendent of Prison,
Women Central Prison, Akola,
District Akola.

..Respondents

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Mr. Surendra V. Suryawanshi, Advocate for the Petitioner.

Mrs. S.S. Joshi, A.P.P. for Respondents/State.

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

DATE : 7 FEBRUARY 2024

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

. Rule.

2. Rule is made returnable forthwith. With the consent of the parties, heard learned Counsel for the litigating sides, finally.

3. The petitioner is questioning legality of the order of detention dated 19.10.2023 passed 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). By impugned order, the respondent no.2 directed to detain the petitioner for a period of one year. The petitioner has been committed to the prison on 21.10.2023.

4. The impugned order is founded on the criminal antecedent of the petitioner, comprising of registration of eight offences under the provisions of the Maharashtra Prohibition Act, 1949, preventive actions on two occasions and in-camera statements of two witnesses. The detaining authority found that the petitioner falls within the meaning of dangerous person as defined under the Act and she is 'bootlegger' also. She was

found to be indulging into notorious criminal activities. The reports of the chemical analysis collected during the investigation of the offences registered against the petitioner, disclosed consumption of contraband would be hazardous to human consumption. She was found to be not deterred by regular penal laws. Hence the impugned order.

5. It is a matter of record that last offence was registered on 18.08.2023 against the petitioner under Section 65(f) of the Maharashtra Prohibition Act bearing C.R. No. 302/2023. In-camera statements of the witnesses were recorded on 05.09.2023. Those were verified on 15.09.2023. On 07.10.2023 proposal was submitted by the respondent no.4 through proper channel to the respondent no.2/detaining authority. Thereafter impugned order was passed. It was approved under Section 3(2) of the Act by the respondent no.1 on 27.10.2023. It was confirmed by the Advisory Board on 14.12.2023.

6. Learned Counsel for the petitioner submits that the subjective satisfaction of the respondent no.2 is defective. Petitioner was released on bail in all the matters. There is error of jurisdiction in holding the petitioner as bootlegger. There is no adequate material before the authority in that regard.

7. He would submit that the statements of the anonymous witnesses were recorded on 05.09.2023. There is gross delay in

passing the impugned order from the date of recording of the statements. He would submit that there is delay in passing impugned order which is unexplained. The impugned order is against the principles of natural justice and suffers from arbitrariness.

8. Learned APP supports the impugned order. According to her, there is cogent material before the detaining authority to pass the impugned order. The impugned order is sustainable even if, on few grounds, the petitioner succeeds to point out. According to her, time line stipulated under the Act has been strictly followed. There is no delay and live-link would not be snapped. Learned APP has also tendered on record the minutes of the meeting of Advisory Board held on 03.11.2023 to indicate that on 31.10.2023, the proposal of the petitioner was placed before the Advisory Board. She would submit that there is no perversity in arriving at the subjective satisfaction of the detaining authority. No case is made out to interfere with the impugned order.

9. We have considered the rival submissions of the parties. We have gone through the papers placed on record on the basis of which impugned order was passed. We have perused the affidavit-in-reply of the respondents.

10. There are as many as eight offences registered against the

petitioner under the provisions of the Maharashtra Prohibition Act. The preventive actions under Section 93 of the Maharashtra Prohibition Act, 1949 have been taken against her on two occasions i.e. on 27.09.2021 and 23.05.2023. On 18.08.2023, the last offence was registered against the petitioner bearing C.R. No.302/2023 with the Chalisgaon Rural Police Station.

11. Our attention has been invited to the findings recorded by the detaining authority in paragraph no.8 of the impugned order holding her as a dangerous person. Simultaneously she is also found to be a bootlegger. We find that all the offences registered against her were under the Maharashtra Prohibition Act. There is no record to indicate that she was found to have been indulged in the offences under Chapter XV and XVI of IPC or any other criminal law. It would not be proper to brand her as a dangerous person.

12. The material on record indicates that the activities of the petitioner pertain to bootlegging. There is no adequate material to brand her as a dangerous person. However by the erroneous findings recorded on one ground, the impugned order of detention does not get vitiated, by virtue of Section 5A of the Act. If the detention is based on two or more grounds, even if one of the grounds, is invalid, still the order of detention could sustain on other grounds.

13. Learned Counsel vehemently submitted that there is no subjective satisfaction. However he is unable to point out from record anything to substantiate this submission. The petitioner was released on bail in all the offences, would not be a mitigating factor in appreciating criminal activities. It is already recorded that there are eight offences registered against her and also two preventive actions. Additionally even in-camera statements have been considered. We do not find any perversity in the subjective satisfaction arrived at by the detaining authority to hold that she is repeatedly indulging in bootlegging.

14. Learned Counsel for the petitioner submitted that in-camera statements are not reliable because they were recorded on 05.09.2023 after considerable gap from the instances quoted by the witnesses. Witness A has quoted instance of July-2023, whereas Witness B has quoted instance of August-2023. In-camera statements have a corroborative value. We are not examining the probability of the instances quoted by the witnesses. The criminal antecedent collected by the respondent no.4 cannot be overlooked. We do not find any inordinate delay in recording their statements on 05.09.2023.

15. The petitioner has been enlarged on bail by this Court by order dated 22.12.2023. It refers that last crime was registered against her on 21.02.2023. It is also submitted by the petitioner that there is delay in taking action against the

petitioner. Undisputedly, last offence has been registered on 18.08.2023 bearing C.R. No.302/2023 and not on 21.02.2023. The date of last offence has been incorrectly recorded in the order of bail.

16. In order to explain the delay, an endeavour is made by the learned APP to point out paragraph no.8 and 10 of the affidavit-in-reply. On 05.09.2023, in-camera statements were recorded. On 15.09.2023, they were verified by the higher authority. On 07.10.2023, proposal was submitted to the respondent no.2/detaining authority. It culminated into impugned order on 19.10.2023. We find adequate explanation has been tendered by the respondents in this regard. We don't notice any in different attitude or lethargy on part of the respondents.

17. After impugned order, the proposal was forwarded for approval on 25.10.2023. The report was called for by the respondent no.1 and after due verification, order of approval was passed on 27.10.2023. We find sound justification in paragraph no.10 of the affidavit-in-reply which belies the submission of the petitioner on the point of delay.

18. We have also called upon learned APP to point out when the papers were placed before the Advisory Board. It is responded by tendering minutes of the meeting of Advisory Board conducted on 03.11.2023. The papers were received by

the Board on 31.10.2023 with satisfies time line prescribed by Section 10 of the Act. After hearing the petitioner on 30.11.2023, the impugned order was confirmed on 14.12.2023. We do not find any procedural illegality or impropriety in this regard.

19. Though the learned Counsel for the petitioner submitted that the impugned order suffers from arbitrariness and there is a violation of principles of natural justice, we have not been pointed out any material to substantiate the submissions.

20. Learned Counsel for the petitioner pointed out that the petitioner is on bail and she is a woman. Considering the nature of allegations, it would not be proper to take drastic action against her. We have recorded that while enlarging the petitioner on bail, the Court was under misconception of fact regarding registration of last offence. We have already recorded our agreement with the findings of subjective satisfaction recorded by the detaining authority. Hence we do not find merit in the submissions of the petitioner.

21. Learned Counsel for the petitioner seeks to rely upon judgment in the matter of **Anil Preetam Kumbhar Vs. Commissioner of Police, Pune City and Others**, reported in 2018(5) Mh.L.J. (Cri.) 83. Paragraph no.11 of the said judgment is pressed into service to buttress that the subjective

satisfaction by the detaining authority is perverse. The facts of the case in hand are distinguishable. Besides that we do not find that the implication of Section 5A of the Act was considered in that judgment. The judgment cited is of no avail to the petitioner.

22. Another judgment cited by the petitioner is in the matter of **Pradeep Nikanth Paturkar Vs. S. Ramamurthi and Others**, reported in AIR 1994 SC 656. Our attention is invited to its paragraph no.13 and 14. We are of the considered view that we have already dealt with the submission advanced on the point of delay and the explanation tendered by the respondents in affidavit-in-reply. We have recorded our agreement. This judgment is also not helpful to the petitioner.

23. We are not inclined to interfere with the impugned order. The Criminal Writ Petition is dismissed. Rule is discharged. The petitioner shall surrender on or before 15.02.2024.

(SHAILESH P. BRAHME J.)

(MANGESH S. PATIL J.)