



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

Criminal Writ Petition No. 1697 / 2023

Vijay s/o Rajendra Kale

Age : 27 years, Occ.: Agriculture,

R/o Krantinagar, Kaij, Ta.Kaij,

District Beed.

...Petitioner

Versus

1. State of Maharashtra

Through its Secretary, Home Department
Mantralaya, Mumbai.

2. The District Magistrate, Beed.

3. The Superintendent of Police,
Beed.

4. The Police Inspector,
Kaij Police Station, Ta. Kaij,
Dist. Beed.

..Respondents

— — —
Mr. S.P. Bhagde and Mr. S.S. Mhaske, Advocate for the Petitioner.

Mr. K.N. Lokhande, A.P.P. for Respondent /State.

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

RESERVED ON : 16 FEBRUARY 2024

PRONOUNCED ON : 23 FEBRUARY 2024

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

. Rule.

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

3. Being aggrieved by an order of detention dated 16.09.2023 passed by the respondent no.2/District Magistrate and order dated 31.10.2023 passed by the respondent no.1 confirming the order of detention, the petitioner is invoking jurisdiction under Sections 226 and 227 of the Constitution of India. The petitioner is held to be bootlegger and directed to be detained 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).

4. The detaining authority has considered criminal antecedents as follows :

(i) C.R. No.159/2023 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act registered on 18.03.2023 with Kaij Police Station.

(ii) C.R. No. 444/2023 for the offence punishable under

Section 65(e) of the Maharashtra Prohibition Act registered on 24.07.2023 with Kaij Police Station.

(iii) Chapter Case No.3/2023 under Section 93 of the Maharashtra Prohibition Act registered on 29.04.2023.

(iv) In-camera statements of two witnesses recorded on 15.08.2023.

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

(i) In-camera statements of two witnesses were not verified by the Competent Authority and they are not reliable.

(ii) subjective satisfaction is faulty. There was no cogent material against the petitioner.

(iii) Both the offences considered by the detaining authority do not indicate disturbance to public order.

(iv) The petitioner was served with notice under Section 41 (A)(1) of Cr.P.C. in both the offences pitted against him which is mitigating factor.

(v) Offence registered on 24.07.2023 was prior to execution of bond of good behaviour executed by the petitioner on 22.08.2023.

(vi) After the representation made by the petitioner, he was not being heard and the order of Advisory Board is against the principles of natural justice.

6. Learned Counsel for the petitioner seeks to rely upon the judgments rendered in the matter of **Pintu @ Sidharth Bhagwan Devde Vs. State of Maharashtra & Others.** in Criminal Writ Petition No.1501/2023 and in the matter of **Sandeep Govind Pawar Vs. The State of Maharashtra and Others** in Criminal Writ Petition No.172/2023.

7. Learned APP seeks to rely upon affidavit-in-reply filed by the respondent no.2. He submits that there is cogent material in the form of two offences registered against the petitioner, a preventive action and in-camera statements. The detaining authority has rightly arrived at subjective satisfaction. Time line has been meticulously followed in arriving at impugned order. He would further submit that material on record indicates that the activities were prejudicial to the public order and drastic action was needed. It is also submitted that the petitioner was heard by the Advisory Board and thereafter decision of confirmation of detention order was taken. Learned APP has placed on record the dates and the events.

8. We have considered submission of both the parties and

have gone through the papers. Record reveals that though there were five offences registered against the petitioner, offences bearing C.R. No.159/2023 and 444/2023 were considered by the detaining authority alongwith other material. By the impugned order, the petitioner has been held to be a bootlegger, indulging in habitual criminal activities. It is recorded that his activities are detrimental to the public order.

9. Our attention is invited by the learned Counsel for the petitioner to the in-camera statements of anonymous witnesses recorded on 15.08.2023 and 16.08.2023. Both the statements are being verified by the Sub-Divisional Police Officer on 06.09.2023 independently. The incidents cited in the statements appear to have been verified by the Competent Authority. We do not find any infirmity in the statements and their verification.

10. We have examined the criminal antecedents of the petitioner to appreciate satisfaction of the detaining authority. It reveals from record that the offences registered against the petitioner, are under the Maharashtra Prohibition Act. Out of them, last two offences are considered alongwith preventive action taken under Section 93 of the Maharashtra Prohibition Act. The relevant papers of C.R. No.159/2023 show that the

petitioner was found to be selling illicit liquor. In another offence, C.R. No.444/2023, he was found to be in possession of illicit liquor alongwith chemicals used for its manufacturing. Activity of the bootlegger by itself would not constitute disturbance to public order. A useful reference can be made to the principles narrated in paragraph no.11 of the judgment in the matter of **Hanif Karim Luluwale Vs. State of Maharashtra and Others** in Criminal Writ Petition No.75/2022. Paragraph No.11 of the said judgment is as follows :

“11. The impugned order, it is further seen, also does not explain as to how bootlegging activity per se and by itself would adversely affect public order. Any bootlegging activity in which involved is manufacture of illicit liquor can be presumed to be adversely affecting public health. But, there is no presumption in fact or law that every incidence of disturbance of public health would necessarily result in disturbance of public order. Covid– 19 pandemic is the biggest example of this preposition. During that period of time, public at large was afflicted with Covid– 19 infection. It was an en masse phenomenon but, our common experience has shown that it did not lead to disturbance of public order in general. Therefore, the authorities would be required to satisfy themselves as to how disturbance of public health in certain cases would result in also disturbance of public order. Such satisfaction has not been reached in the present case.”

11. Learned Counsel for the petitioner has rightly invited our attention to the judgment rendered in the matter of Sandeep Govind Pawar (supra). The relevant paragraph no.12 is as follows :

“12. It is imperative for the detaining authority to reach a subjective satisfaction about the fact that the detinue being at large would be prejudicial to the public order.

Admittedly, except registration of offences under the Prohibition Act, no offence has ever been registered against the petitioner under the Indian Penal Code or any other penal law. The fact that except the latest two cases in all earlier matters, the criminal cases have been stopped under section 258 of the Code of Criminal Procedure makes it necessary to consider as to if mere registration of the latest two offences under section 65E of the Prohibition Act coupled with couple of actions under section 93 of the Prohibition Act of securing bonds from petitioner can be said to be sufficient to reach a subjective satisfaction regarding petitioner being at liberty would cause disturbance to public order. Similarly, it becomes imperative for the State to demonstrate that the provisions of the common law are insufficient to deter him from engaging him in the activities which would be prejudicial to the public order.”

12. The petitioner has indulged in the activities prohibited under the provisions of Maharashtra Prohibition Act. There is no record against him to have indulged in any criminal activity punishable under Indian Penal Code or any other criminal law. In-camera statements and the preventive action under Section 93 of the Maharashtra Prohibition Act, also do not indicate his involvement, causing disturbance to public order. We are of the considered view that the material pitted against the petitioner is scanty. There is nothing on record to show that his activities could not have been curbed by ordinary penal laws.

13. The submission of the petitioner pertaining to notice under Section 41(A)(1) of the Criminal Procedure Code, has no merit. We have already taken view in the matter of **Vinod**

Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and Others in Criminal Writ Petition No.1430/2023. In view of following paragraph no.35 and 36 of the judgment, we are not prepared to concur with the petitioner.

“35. Turning to the submission of the learned advocate for the petitioner to the effect that the petitioner was merely issued with notice under Section 41 – A of the Code of Criminal Procedure and even the Investigating Officer was never required to arrest him would be a circumstance repelling the stand of the respondent No.1 — detaining authority that the ordinary law would not be sufficient to prevent the petitioner’s alleged activities, we are of the considered view that the circumstance that in spite of the petitioner having involved in as many as twelve crimes of which eleven are in respect of offences under the Prohibition Act including the latest three ones, in itself is sufficient to demonstrate that irrespective of having been prosecuted for these many times he is continuing with the alleged activity of manufacturing/possessing illicit liquor is demonstrative of the fact that the ordinary law of the land has been unable to abate his activities as a bootlegger. Pertinently, in spite of a preventive action having been initiated against him under Section 93 of the Prohibition Act in the month of March 2023 he has been involved in subsequent two offence under Section 65(e) of the Prohibition Act in the month of June 2023. This further substantiates the inference drawn by the respondent No.1 — detaining authority that the ordinary law of the land was falling short to prevent the petitioner’s activities as a bootlegger.”

“36. It is to be noted that Section 41 – A (1) of the Code of Criminal Procedure is to be resorted to by the Investigating Officer before arresting an individual and that provision would regulate his powers to arrest an individual. Needless to state that the arrest contemplated under the Code of Criminal Procedure for carrying out the investigation into a crime by resorting to custodial interrogation would be essentially for completing the investigation. Suffice for the purpose to observe that in the matter of *Arnesh Kumar Vs. State of Bihar and Anr.*; (2014) 8 SCC 273 the Supreme Court has laid down several guidelines which have to be borne in by the investigating Officer before arresting a person. We are pointing out the law to demonstrate that the submission of the learned advocate for the petitioner that the very fact that the I.O. did

not feel necessary to arrest the petitioner although the crimes were registered would be indicative of the fact that even he did not require the petitioner to be sent behind the bars, is fallacious. The arrest for carrying out investigation into a crime would be for a limited purpose of facilitating the Investigating Officer to complete the investigation. Such arrest cannot be looked upon as an action which can be aimed at preventing the accused from indulging in a similar activity rather any such approach would be inconsistent with the mandate of law laid down in *Arnesh Kumar (supra)*. The action of preventive detention under the preventive detention laws would be aimed at abating the specific activities of an individual whereas the arrest for the purpose of investigation cannot be aimed at preventing him from indulging in any such activity. Precisely for this reason, we are not in agreement with the submission of the learned advocate for the petitioner that petitioner being not arrested in the crimes should be taken into account to draw an inference that even the I.O. did not feel it necessary to abate his unlawful activities. In short the purpose of arrest in respect of crime is aimed at conclusion of the investigation, whereas, detention of a person under the preventive detention law is to prevent him from indulging in certain activities.”

14. It reveals from the record that last offence was registered on 21.07.2023. Thereafter in-camera statements were recorded. On 07.09.2023, the proposal was submitted to the detaining authority. On 16.09.2023, impugned order was passed. There appears to be gap of 55 days. We have considered affidavit-in-reply. Live link between the material pitted against the petitioner and the proposed action would stand snapped for want of satisfactory explanation.

15. We have already recorded that there is no adequate material against the petitioner to take the drastic action. The subjective satisfaction of the detaining authority is not an

intelligible decision and the circumstances are not sufficient enough to indicate that the personal liberty of the petitioner, can be curtailed by such draconian law of preventive detention. We have considered the principles laid down in paragraph no.7 and 8 of the decision rendered in the matter of Pintu @ Sidharth Bhagwan Devde (supra). We do not find the activities of the petitioner to be prejudicial to the public order.

16. We, therefore, pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The detention order dated 16.09.2023 passed by the respondent no.2/District Magistrate, Beed and order dated 31.10.2023 passed by the respondent no.1, are quashed and set aside.
- (iii) The petitioner shall be released forthwith.
- (iv) Rule is made absolute in the above terms.

(SHAILESH P. BRAHME J.)

(MANGESH S. PATIL J.)