



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

CRIMINAL WRIT PETITION NO. 1900 OF 2023

Mohan Nurchand Chavan,
Age – 43 years, Occu. : Labour,
R/o Akhatwada Tanda, Post
Palaswadi, Tq. Khultabad,
Dist. Chhatrapati Sambhajanagar. .. Petitioner

Versus

1. The State of Maharashtra
Through Section Officer,
Home Department (Special)
2nd Floor, Mantralaya, Mumbai.
2. The District Magistrate,
Collector Office,
Chhatrapati Sambhajanagar.
3. The Superintendent,
Central Prison, Harsool (Aurangabad)
Chhatrapati Sambhajanagar. .. Respondents

Shri Ravindra V. Gore, Advocate for the Petitioner.
Shri V. K. Kotecha, A.P.P. for the Respondent Nos. 1 to 3.

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

**CLOSED FOR JUDGMENT ON : 01.03.2024
JUDGMENT PRONOUNCED ON : 07.03.2024**

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

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

2. The petitioner has assailed order of detention dated 13.10.2023 passed by respondent No. 2/District Magistrate Aurangabad and order of confirmation dated 04.12.2023 passed by respondent No. 1/State of Maharashtra, under provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience).

3. Respondent No. 2/Detaining Authority found that the petitioner is a bootlegger. For arriving at subjective satisfaction, four offences and two in camera statements have been taken into account. The offences considered by the authorities are as follows :

Sr. No.	Police Station	CR No. & Date	Under Section	Present Status
01.	State Excise Department, C-Division, Sillod, Chhatrapati Sambhajinagar.	90/2023 Dt. 06.05.2023	U/Sec. 65(k)(e)(f) of the Maharashtra Prohibition Act, 1949	Pending Trial
02.	State Excise Department Divisional Flying Suqad, Chhatrapati Sambhajinagar.	148/2023 Dt. 19.05.2023	U/Sec. 65(f) of the Maharashtra Prohibition Act, 1949	Pending Trial
03.	Sub Inspector, State Excise Department, C-1, Kannad, Chhatrapati	148/2023 Dt. 19.05.2023	U/Sec. 65(e)(f) of the Maharashtra Prohibition Act, 1949	Pending Trial

	Sambhajinagar.			
04.	Inspector, State Excise Department, C- Division, Sillod Chhatrapati Sambhajinagar.	155/2023 Dt. 28.07.2023	U/Sec. 65(e) of the Maharashtra Prohibition Act, 1949	Pending Trial

4. The record reveals that the impugned order was passed on 13.10.2023. The petitioner is served with relevant papers and grounds of objection on 17.10.2023. On 03.11.2023 he made representation to respondent No. 3/Superintendent. He received notice dated 20.11.2023 intimating hearing before the Advisory Board through video conferencing scheduled on 30.11.2023. On 30.11.2023 he was heard. On 04.12.2023, respondent No. 1 passed order confirming order of detention. With these undisputed facts, we proceed to examine the matter on merits.

5. The learned counsel for the petitioner submits that his representation dated 03.11.2023 has not been placed before Advisory Board with three weeks from the date of detention, which is against the provisions of Sec. 10 of the M. P. D. A. Act. He would further submit that subjective satisfaction of the detaining authority is perverse. There is no cogent material to resort to the drastic action under the M. P. D. A. Act. There is no live link. Unexplained delay vitiates impugned orders. It is further submitted that the petitioner is being served with notices U/Sec. 41-A of the Code of Criminal Procedure for the offences pitted against him which should work as a mitigating factor. Learned counsel would refer to the judgments of this Court in

the matters of **Prakash Chandrakant Kanjar Vs. State of Maharashtra Cri. W. P. No. 1285 of 2023 dated 19.10.2023** and **Sandeep Govind Pawar Vs. The State of Maharashtra others** reported in ***2023(5) Mh.L.J. (Cri) 124***.

6. The learned Assistant Public Prosecutor would repel the submissions on the basis of three affidavits in reply. According to him, relevant material has been taken into consideration for arriving at the subjective satisfaction. He would submit that the petitioner has been indulging in illegal activities not only between 06.05.2023 and 28.07.2023, but even before that. There is no delay in passing the impugned order. After impugned order was passed, the papers were placed before Advisory Board within stipulated time. The petitioner was heard and thereafter order was passed on 04.12.2023, confirming the order of detention. He would submit that there is no violation of statutory procedure. He has placed reliance on our **judgment dated 17.01.2024 in the matter of Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and others in Cri. W. P. No. 1430 of 2023**.

7. We have considered submissions of both the parties. We have perused pleadings and gone through the papers. The petitioner is held to be bootlegger. The last offence bearing CR No. 155/2023 was registered on 28.07.2023. In camera statements were recorded and they were verified by the competent authority. The respondent No. 1 approved detention order on 20.10.2023. On 03.11.2023 the petitioner submitted

representation.

8. It is case of the petitioner that his representation dated 03.11.2023 was not placed before the Advisory Board within a period of three weeks as contemplated U/Sec. 10 of the M. P. D. A. Act. The petitioner has produced on record representation submitted on 03.11.2023 to the respondent No. 3. There is postal acknowledgment on record. Our attention is invited to notice dated 20.11.2023 intimating the date of hearing scheduled on 30.11.2023. The petitioner is called upon to make representation by this notice. Learned counsel for the petitioner has tendered on record a photo copy of track consignment to show that on 04.11.2023 his representation was delivered to the respondent No. 3.

9. As regards compliance with Section 10 of the M. P. D. A. Act, which is a statutory right of the detenu, as per Section 8(1) of the M. P. D. A. Act a detenu has a right to make a representation. Affidavits in reply are silent on this aspect of the matter. We called upon learned A. P. P. to clarify as to when representation dated 03.11.2023 was received and whether it was placed before the Advisory Board within three weeks from the date of detention. Learned A.P.P. failed to tender any explanation. This aspect has also not been dealt with in reply filed by the respondents. It can be safely concluded that the representation dated 03.11.2023 reached the respondent No. 3 on 04.11.2023. Respondent No. 3 should have placed it before the Advisory Board within three weeks. Notice dated 20.11.2023

shows that the representation received by respondent No. 3 was not at all forwarded to respondent No. 1. Otherwise, petitioner would not have been called upon to submit any representation. There is violation of Section 10 of the M. P. D. A. Act, which has caused prejudice to the petitioner. This is against the safeguard provided by Article 22(5) of the Constitution of India.

10. Though the petitioner made another representation on 25.11.2023, his earlier representation was not placed before the Advisory Board along with the proposal. The procedural flaw goes to the root of the matter and vitiates entire action against the petitioner.

11. As regards the ground of absence of live link, last offence was registered on 28.07.2023 and impugned order was passed on 13.10.2023. In camera statements were recorded on 08.09.2023 and 11.09.2023. This delay from 28.07.2023 (registration of last offence) and 08.09.2023 has not been explained by the respondents. This could have been avoided. Affidavits in reply do not provide satisfactory explanation for the delay in passing impugned order. We, therefore, find merit in the submission of the learned counsel for the petitioner.

12. The petitioner was served with notice U/Sec. 41-A of the Cr. P. C. for the offences pitted against him. This is indicative of the fact that if he is being at large would not be prejudicial to the public order. The petitioner refers to the judgment of the Division Bench of this Court in the matter of **Sandeep Govind**

Pawar Vs. State of Maharashtra and others (supra). We have considered para Nos. 12 and 13. However, learned A. P. P. has rightly pointed out view taken by us in the latest judgment rendered in the matter of **Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and others** (supra). We have elaborately considered this aspect of the matter in paragraph No. 36 to hold that without arresting detenu if only a notice U/Sec. 41-A of the Cr. P. C. is served upon him would not be a mitigating factor. We do not find any merit in the submission of the petitioner.

13. The learned counsel for the petitioner vehemently argued that offences pitted against him are not sufficient to justify action of detention under the M. P. D. A. Act. We find that in all four offences under the provisions of the Maharashtra Prohibition Act have been taken into account. Relevant police papers of the offences are placed on record. We find that the petitioner indulged in criminal activity regularly and within short span. Considering the quantum of illicit liquor involved in the offences the detaining authority has rightly recorded that the activity is against the public order. In camera statements do support the offence. We are of the considered view that subjective satisfaction of the detaining authority cannot be faulted with.

14. As we have recorded findings on the point of delay and non consideration of representation in favour of the petitioner, we are inclined to allow this petition. We are being consistent with the law laid down vide **judgment dated 04.03.2024 in the matter**

of Santosh Koli Vs. State of Maharashtra in Cri. W. P. No. 1858 of 2023.

15. For the reasons recorded above, we pass following order.

O R D E R

- (i) The criminal writ petition is allowed in terms of prayer clause “B”.
- (ii) The petitioner shall be set at liberty forthwith.
- (iii) Rule is made absolute in above terms.

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

bsb / March 24