



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.662 OF 2024

Kayyum @ Quyyum Salabat Tadv
Age: 46 years, Occu.: Agriculturist,
R/o. Pimpalgaon Kamani, Tq. Jamner,
District Jalgaon.

.. Petitioner

Versus

1. State of Maharashtra
Through its Chief Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. District Magistrate,
Office at District Magistrate,
Jalgaon, District Jalgaon.
3. The State of Maharashtra
Through Superintendent,
Central Jail, Nagpur,
Nagpur.

.. Respondents

...
Mr. H. P. Randhir, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for the respondents – State.
...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

DATE : 06 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. H. P. Randhir for the petitioner
and learned APP Mr. V. K. Kotecha for the respondents – State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention order dated 14.03.2024 bearing No. Dandapra/KAVI/M.P.D.A./09/2024 passed by respondent No.2 and the confirmation order dated 08.05.2024 passed by respondent No.1, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, five offences were considered viz. (i) Crime No.104 of 2022 registered with Pahur Police Station, District Jalgaon for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, (ii) Crime No.347 of 2022 registered with Pahur Police Station, District Jalgaon for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, (iii) Crime No.170 of 2023 registered with Pahur Police Station, District Jalgaon for the offence punishable under Section 65(e) of the

Maharashtra Prohibition Act, (iv) Crime No.369 of 2023 registered with Pahur Police Station, District Jalgaon for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act and (v) Crime No.429 of 2023 registered with Pahur Police Station, District Jalgaon for the offence punishable under Section 65(f) of the Maharashtra Prohibition Act. Learned Advocate for the petitioner has also filed the written notes of arguments, wherein it is submitted that the detaining authority has passed the impugned order in casual and mechanical manner without application of mind. In fact, the petitioner has been arrayed in fifteen offences and out of those fifteen offences, he has been acquitted in twelve offences. This fact has not been considered at all. On page No.31, paragraph No.11 of the detention order, it has been observed that the volume of ethyl alcohol in the water makes that substance hazardous to human consumption and likely to cause jaundice, cancer and accumulation of water in stomach or deplete blood level. It was also stated that the said opinion has been based on the Chemical Analysis report of the contraband collected during the course of the investigation, however, none of those reports were obtained from expert in the field. The detaining authority is not an expert

person and, therefore, on this point, he relies on the decision in ***Yogesh Bharat Rajput Vs. State of Maharashtra and others, [Criminal Writ Petition No.105 of 2024 decided by the Coordinate Bench of this Court on 27.03.2024]***, in which reliance has been placed on the decision in ***Ganesh @ Nana Gangaram Koli Vs. State of Maharashtra and Ors., [Criminal Writ Petition No.1530 of 2023 decided by the Coordinate Bench of this Court on 09.02.2024]***. Further, in none of the matters, the petitioner has been arrested. He has been released by giving notice under Section 41-A of the Code of Criminal Procedure. Further, there is delay of about more than six months in passing the detention order from the date of registration of the last offence. The last offence was registered against the petitioner on 17.10.2023 and the detention order is passed on 14.03.2024. The delay has not been explained by the detaining authority and, therefore, he relies on the decision in ***Salman Vs. State of Maharashtra through its Secretary, Home Department and others, [2020 SCC OnLine Bom 858]***. There is also violation of Section 3(3) of the MPDA Act. When that Section requires that the detaining authority shall forthwith send the report to State Government, then the proposal forwarded for approval on 19.03.2024 is with delay, which has not been explained and, therefore, on this point, he relies on the

decision in ***Hetchin Haokip Vs. State of Manipur and Others, [(2018) 9 SCC 562], Akash Annasaheb Hodade Vs. District Magistrate, Latur and Others, [Criminal Writ Petition No.391 of 2023 decided by the Coordinate Bench of this Court on 06.06.2023]*** and ***Aatish s/o Ravindra Kharat Vs. The State of Maharashtra and others, [Criminal Writ Petition No.1794 of 2023 decided by the Coordinate Bench of this Court on 07.03.2024]***.

He further submits that the detaining authority has not taken into consideration the acquittal of the petitioner from S.C.C. No.602 of 2022 arising out of Crime No.76 of 2022 and S.C.C. No.762 of 2022 arising out of Crime No.104 of 2022 registered with Pahur Police Station, Taluka Jamner, District Jalgaon by learned Judicial Magistrate First Class, Jamner, on 16.01.2024. Therefore, such detention order cannot be allowed to sustain.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the “MPDA Act”). The detaining authority has relied on the two in-camera statements and the subjective satisfaction

has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP relied on the affidavit-in-reply of Mr. Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. Learned APP has relied on the decision in ***Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751)***, wherein it has been held that :-

“15. The detention order against the appellant herein was passed on the allegations that he was persistently engaged in criminal activities which adversely affected the maintenance of public order in the localities, and therefore, with a view to prevent him from engaging in such activities it was necessary to preventively detain him under the provisions of the Act. For consideration of the question whether the appellant could be said to be a dangerous person it is necessary to read the definition of the term in Section 2(b-1) and the provision of Section

2(a)(iv) regarding the meaning of the term "acting in any manner prejudicial to the maintenance of public order". Under the explanation under Section 2(a)(iv) it is provided that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if any of the activities of any of the persons referred to in the clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, or a grave or widespread danger to life or public health. The deeming clause in the explanation widens the scope of the provision in Section 2(a)(iv). It follows that if a person found to be repeatedly engaged in such activities as mentioned in Section 2(b-1) which affect adversely or are likely to affect adversely the maintenance of public order he can be detained as a dangerous person in exercise of the power under Section 3 of the Act."

The detaining authority has to satisfy itself on the basis of material on record. It is not possible to prescribe catalogue of materials which can form basis of order. It has to be left to the discretion of the authority and the material relied upon should have nexus with purpose of order. Here, in this case, the repeated activity of the petitioner was sufficient for the detaining authority to arrive at a conclusion that the petitioner is a bootlegger. Learned APP further relies on the decision on **Vinod Dhanulal**

Jaiswal Vs. District Magistrate Aurangabad and Ors., [AIROnline 2024 BOM 105], wherein the petitioner had contended that in absence of specific observation in Chemical Analysis Report regarding harmfulness of seized contraband should invalidate detention order. It was observed that the detaining authority did not pass the order on harmfulness of liquor, therefore, absence of such opinion was inconsequential. The detention order was based on petitioner being bootlegger, supported by various offences and statements of witnesses describing his activities and their impact on public order and, therefore, the subjective satisfaction can be said to have been arrived at. There is absolutely no delay in passing the order and, therefore, the petition deserves to be dismissed.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) **Nevanath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]**,

(ii) **Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743]**;

(iii) **Kanu Biswas Vs. State of West Bengal, [1972 (3) SCC 831]** wherein reference was made to the decision in **Dr. Ram**

Manohar Lohia vs. State of Bihar and Ors. [1966 (1) SCR 709];

(iv) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];

(v) Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];

(vi) Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].

7. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or not. In ***Nevanath (Supra)*** itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. The first and the foremost fact to be noted is that the confidential statements of witnesses 'A' and 'B' appears to have been recorded on 20.12.2023 and they were verified by Sub Divisional Police Officer, Bhusawal on 16.01.2024. However, Police Inspector of Pahur Police Station appears to have

submitted the proposal on 29.02.2024. We wonder that when and how Sub Divisional Police Officer, Bhusawal had come in picture when the proposal was yet to be forwarded from the possession of Police Inspector, Pahur Police Station. Certainly, there is delay from the date of recording of statements of confidential witnesses and sending of proposal. There is no affidavit of Police Inspector, Pahur Police Station or the Sub Divisional Police Officer, Bhusawal, who had verified the confidential statements of witnesses. The original confidential statements were made available for inspection to this Court, however, it is to be noted that even in the original, the name and address of those witnesses have been hidden. When those original was supposed to be kept in the possession of or in the file of detaining authority, then why the whitener should be applied on the original, is a question. Even at the time of verification by Sub Divisional Police Officer, it appears that he had written the name of that witness and then whitener has been applied to it. As aforesaid, there is no affidavit of either Police Inspector, Pahur Police Station or Sub Divisional Police Officer, Bhusawal explaining when the whitener was applied. In the affidavit of the detaining authority, there is no statement that the whitener was

applied on the original in his office. As aforesaid, in two offences, the petitioner has been acquitted on 16.01.2024. That prosecution was through Police Inspector, Pahur Police Station. It is, therefore, presumed that Police Inspector, Pahur Police Station was aware about the acquittal of the petitioner from those two offences before he had sent the proposal on 29.02.2024, still he maintained and had not informed the detaining authority about the acquittal. One of those matters i.e. Crime No.104 of 2022 was considered by the detaining authority for passing detention order. In fact, we are of the opinion that when the proposal is received by the detaining authority, he should once again take account of the cases against the petitioner and ensure that judgment has been passed in any of those matters. When there is gap of more days in sending proposal and passing detention order, certainly such exercise is must for the detaining authority. The said point of acquittal directly goes to the root of the point subjective satisfaction. Further, in this case, it appears that in respect of Crime No.369 of 2023 and 429 of 2023, the CA report was not received on the date when the detention order was passed. Therefore, the CA report was available in two matters i.e. Crime No.347 of 2022 and Crime No.170 of 2023. However, no

expert opinion appears to have been placed by the sponsoring authority before the detaining authority. If we consider paragraph No.11 of the impugned order, the detaining authority has considered the ethyl alcohol level of all the cases into consideration inclusive of those cases which he had not considered for passing the detention order. Further, the percentage given in paragraph No.11 and the tabular chart in paragraph No.4 are not matching to fullest extent. This shows non application of mind. The decision in ***Phulwari Jagdambaprasad Pathak (Supra)*** and ***Vinod Dhannulal Jaiswal (Supra)*** will not be helpful to the respondents taking into consideration the facts of the case. We would like to further observe that if there are more grounds for detention as well as more grounds for challenging the said detention order, then it would be sufficient for the petitioner to show that in one or few grounds, the detaining authority has erred. The most important question has not been answered by the detaining authority that the opinion formed by the District Magistrate does not indicate as to how the common law provisions were not sufficient to deter the petitioner from disturbing the public order. We are also taking note of the observation from ***Sandeep Govind Pawar Vs. State***

of Maharashtra, Through its Additional Chief Secretary and Others, [2023 SCC OnLine 778], wherein it has been held :-

“13. The fact that the petitioner has not been arrested in the latest two crimes and was merely served with a notice under Section 41 is indicative, as has been consistently held by this Court in the matters of Prashant Bharat Datar and Devidas Lalji Ade (Supra), latter of which was rendered relying upon the decision in the matter of Mallada K. Sri. Ram Vs. State of Telangana; 2022 SCC OnLine SC 424, that the Investigating Officer did not feel it necessary to arrest the petitioner – detenu and was satisfied in serving with notice under Section 41A(1) of the Code of Criminal Procedure is indicative of the fact that his being at large may not be prejudicial to the public order”

8. In **Mallada K. Sri. Ram Vs. State of Telangana and others, [2022 SCC OnLine SC 424]** relied by the learned Advocate for the petitioner, it has been observed that :-

“15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a

mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law ”

9. The 5 days delay in forwarding the proposal for approval i.e. from 14.03.2024 to 19.03.2024 has not been properly explained in the affidavit-in-reply. We are therefore of the opinion that such order curtailing the liberty of the citizen of this country cannot be allowed to sustain for the aforesaid reasons.

10. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

11. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I)** The Writ Petition is allowed.
- II)** The detention order dated 14.03.2024 bearing No. Dandapra/KAVI/MPDA/09/2024 passed by respondent No.2 and the confirmation order dated 08.05.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner - Kayyum @ Quyyum Salabat Tadvī shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm