

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.929 OF 2024

Mrs.Rupa Chandrakant Ubale,
Age : 35 years,
R/at.Samtanagar Zopadpatti,
Pandurangwadi, Dombivali (E),
Taluka-Kalyan, District-Thane. Petitioner/
(Presently lodged at Thane Central Prison) Detenu

Versus

- 1 Commissioner of Police, Thane
- 2 The State of Maharashtra
(Through the Secretary,
Home Department (Spl.)
Mantralaya, Mumbai.
- 3 The Superintendent Thane Central Jail Respondents

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Mr.Indrajeet Joshi, Advocate for the Petitioner.

Mr.S.V. Gavand, APP for Respondent – State.

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***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 2nd JULY 2024.

JUDGMENT (PER : Manjusha Deshpande, J.) :

1 Rule has been issued in the present matter on 21st March, 2024, and the matter is taken up for final disposal with the consent of parties.

2 The petitioner herein is challenging the order of detention dated 6th February, 2024, passed by the Commissioner of Police, Thane. The order of detention was accompanied by order of committal and ground of detention dated 6th February, 2024, issued by the Commissioner of Police, Thane, to the petitioner, on the same day.

 The petitioner has preferred a representation to the respondents on 13th February, 2024, seeking revocation of the said detention order.

3 The petitioner is challenging the detention order on various grounds which are mentioned in the memo of writ petition.

4 It is the contention of the petitioner that the order of detention is passed by the Detaining Authority without any application of mind and in a mechanical manner.

 The Detaining Authority had considered 13 cases and preventive action taken against the petitioner, which are infact stale cases. The Detaining Authority has relied on C.R.No.231 of 2023, for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949, registered with the Excise Department, Dombivali dated 26th October, 2023. According to the petitioner, the raid was conducted on 17th October, 2023, and the petitioner was arrested on 26th October, 2023. The order of detention is passed on 6th February, 2024

for offence registered on 26th October, 2023. The order of detention does not prove a live link, as there is a gap of more than 3 ½ months between registration of offence and the detention order.

5 The petitioner has taken objection to the reliance placed by the Detaining Authority on the report of the Chemical Analyser (CA) issued by the Director of Forensic Science Laboratories, State of Maharashtra. According to the petitioner, there is discrepancy in the date on which the samples were sent and the date referred in the final report of the CA. Therefore, the said discrepancy in the dates and also reference mentioned in the final report, creates doubt whether the said reports are in respect of the samples of the country liquor in the petitioner's case.

Based on the said C.R.No.231 of 2023, the Detaining Authority has arrived at a subjective satisfaction and passed the order of detention. If the very report on which the case of the prosecution is based itself is doubtful, the material relied on by the Authorities for recording subjective satisfaction also becomes unreliable.

When the learned APP was called upon to explain the discrepancy in this communication, the learned APP has taken us to the affidavit. The only explanation to the said discrepancy seems to be that it is a typographical mistake. The said explanation tendered by the said authority is not satisfactory, therefore unacceptable.

6 We have heard the parties. The advocate for the petitioner has drawn our attention to the communication sent by the Inspector of State Excise Department dated 7th December, 2023, addressed to the Director of Forensic Science Laboratories, whereby the samples were sent for analysis and testing. The petitioner has further referred to the communication addressed to the Director Forensic Science Laboratories dated 8th December, 2023, gives reference to the samples sent by the Inspector of State Excise Department, communication No.DET 112023/747/NIRI dated 7th December, 2023. Giving reference to the said communication, it is requested to the concerned Director, that the samples under reference were sent to the Laboratory on 4th November, 2023, hence, considering that the MPDA proceedings were proposed against the petitioner, it was requested to make available the report of the said samples, as early as possible.

7 Thereafter, on 13th December, 2023, the Directorate of Forensic Science Laboratories communicated its report. On perusal of the said report it reflects that the Reference No.112023/656/I is shown to be dated 30th October, 2023. Meaning thereby the said sample under reference of which report was issued was not the same sample, as referred in the communication dated 8th December, 2023.

8 In the communication dated 8th December, 2023, reference is made to samples sent on 4th November, 2023, whereas, the examination report refers to sample dated 30th

December, 2023, and the said report is dated 13th December, 2023. Even, the receipt of date of sample referred in examination report is 30th October, 2023. Therefore, considering that the offence which is registered against the petitioner under Section 65(e) of the Maharashtra Prohibition Act, 1949, which is basis of the detention order providing a live link to the petitioner itself, is not based on genuine material. The subjective satisfaction recorded by the Detaining Authority is based on the material which is not reliable. While relying on the case registered against the petitioner, in order to satisfy himself about criminal tendencies of the petitioner and her inclination to continue bootlegging activities, the material collected during investigation, has been relied on. The sample taken for the Chemical Analysis. So also the report received from the Chemical Analysis was relied while recording the subjective satisfaction.

9 In view of the glaring inconsistency in the communication, whereby the samples were sent and the report received do not refer to one and the same samples. The reference number as well as the date of receiving the sample differ. Hence, the subjective satisfaction recorded by the Detaining Authority does not seem to be based on genuine material. As a result, the subjective satisfaction of the Detaining Authority gets vitiated and the right of the detenu to make an effective representation gets frustrated. Though the petitioner has raised other grounds, the above referred ground itself is so glaring that on this ground alone the order of detention issued by the Commissioner of Police, Thane, dated 6th February, 2024,

deserves to be quashed and set aside. As a result, the Writ Petition is allowed and the Detention Order No.RC/PD/DO/MPDA/02/2024, dated 6th February, 2024 issued under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers & [Drug-offenders, Dangerous persons and video pirates] Act, 1981, passed by the respondent no.1-Commissioner of Police, Thane, is quashed and set aside and the petitioner is ordered to be released forthwith.

8 Rule is made absolute in the above terms. No order as to costs.

Writ Petition stands disposed of accordingly.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)