

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2663 OF 2024

Ramesh Balu Chavan] .. Petitioner

vs.

State of Maharashtra & Ors.] .. Respondents

Mr.Premkumar Mishra a/w Kumar Subeshwar Pathak, Varuna Gade
and Ruchita Karve for the Petitioner.

Mr.S.V. Gavand, APP for the State.

**CORAM : NITIN W. SAMBRE &
MANJUSHA DESHPANDE, JJ**

DATE : 26th SEPTEMBER, 2024.

P.C.

1 Heard the learned counsel for the Petitioner and the learned APP
for the State.

2 The challenge is to the detention order passed by the
Respondent-State on 21.02.2024, which is based on 7 offences, out of
total offences registered against the Petitioner punishable under the
provisions of the Maharashtra Prohibition Act.

3 The contention of the learned counsel for the Petitioner is, in all
the seven offences the action was taken against the Petitioner under
Section 41A of the Cr.P.C. thereby not giving effect to his arrest. An
intimation given to the Petitioner was duly honoured by him by
attending the Investigating Agency/Officer.

4 In this background, it is claimed that the provisions of the Act for ordering detention ought not to have been invoked as the Investigating Officer in the aforesaid seven crimes was of the opinion of non requirement of the custody of the Petitioner.

5 According to the learned counsel for the Petitioner, once the Investigating Officer has not found it necessary necessary to take custody of the Petitioner in the aforesaid seven offences, which are formed to be basis for ordering the detention, the detention order cannot be said to be justified, as no deterrent action could be said to be warranted in the offences.

6 So as to substantiate the aforesaid contention, the learned counsel for the Petitioner has relied on the Division Bench Judgment delivered at Nagpur Bench on 28.06.2022, in ***Criminal Writ Petition No.75 OF 2022 in the case of Hanif Karim Luluwale vs. State of Maharashtra & Ors.*** That being so, he would urge that the order of detention can be said to not justified and hence it is liable to be quashed and set aside.

7 The learned APP Mr. Gavand, while justifying the order of detention would invite attention of this Court to the order delivered in ***Criminal Writ Petition No. 4403 Of 2016 in the case of Ramesh Balu Chavan vs. The Commissioner of Police & Ors.*** decided on 03.04.2017, wherein the earlier detention order dated 22.11.2016, passed against the Petitioner, was questioned. Mr. Gavand would submit that the very act of the Petitioner in the matter of commission of offence under the provisions of the Maharashtra Prohibition Act and continuously involving himself in such similar offences was found to be

the basis for ordering his detention, was upheld.

8 Mr. Gavand would invite our attention to the subsequent development viz. order dated 03.04.2017 delivered by the Division Bench of this Court in Criminal Writ Petition No.4403/2016 so as to claim that neither the earlier detention order nor the registration of offences acted as deterrent to the Petitioner in the matter of commission of offence as the Petitioner continued committing the offences under the provisions of the Maharashtra Prohibition Act.

9 That being so, he would claim that the order of detention is quite justified and the impact of Section 41A of the Cr.P.C. of not arresting the person, cannot be taken into account as adverse to the act of passing of the detention order particularly when the earlier detention order was upheld by this Court. That being so, he would claim that the Petition is liable to be dismissed.

10 We have considered the rival claims. The Apex Court in the case of ***Pramod Singla vs. Union of India & Ors in Criminal Appeal arising of Special Leave Petition (Cri) No.10798/2022***, decided on 10.04.2023, had an occasion to deal with the similar issue. The intentions with which the statutory enactment gives the powers to the Detaining Authority to pass an order of detention, has made the following observations :-

“21. Before we deal with the issues framed, we find it important to note that prevention detention laws in India are a colonial legacy, and have a great potential to be abused and misused. Laws that have the ability to confer arbitrary powers to the state, must in all circumstances, be very critically examined, and must be used only in the rarest of rare cases. In cases of preventive detention, where the detenu is held in arrest not for a crime he has committed, but for a potential crime he may commit, the Courts must always give every benefit of doubt in favour of the detainee, and even the slightest of errors in procedural compliances must result in favour of the detainee.”

11 In the backdrop of the aforesaid observations by the Apex Court, if we consider the observations of the Division Bench, in the case of **Hanif Karim Luluwale** (supra), the Division Bench of this Court in Para 2, 5, 6 and 11, has observed thus :-

“2. Upon careful perusal of impugned detention order, we find that learned counsel for the petitioner is right in his submission that when the Investigating Officer did not think it fit to arrest the petitioner in any of the core crimes which have been considered while passing the detention order, it is quite strange to find that preventive detention of such a person is necessary.”

“5. It is seen that the detaining authority has relied upon the four crimes registered against the petitioner under different provisions of Maharashtra Prohibition Act, 1949 and also two statements of confidential witnesses. So far as the crimes registered under the Maharashtra Prohibition Act, 1949 are concerned, we have already found substance in the argument of learned counsel for the petitioner that it would be wrong to say that even for these crimes detention of the petitioner was necessary on the ground that the petitioner was habitual bootlegger.

6. This is for the reason that for these very crimes, the Investigating Officer did not think it fit to arrest the petitioner. Arrest for these crimes, which are cognizable, was possible for the Investigating Officer by recording his requisites satisfaction under Section 41-(1) (ii) (a) of the Cr.P.C. which lays down that Police Officer may without an order of Magistrate and without a warrant, arrest any person if he is satisfied that such arrest is necessary, for the reason inter-alia, of preventing such person from committing any further offence. Such being the nature of the power of the Investigating Officer, which power Investigating Officer has not exercised in the present case, it cannot be said that registration of four bootlegging crimes against the petitioner provided any reasonable material for detaining authority to arrive at his requisite satisfaction.”

“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.”

12 The fact remains that the offences under the provisions of the Maharashtra Prohibition Act, were considered for ordering the detention and admittedly in all these 7 offences, the action under Section 41A of the Cr.P.C. was initiated against the Petitioner and his custody was

never claimed.

13 The issue as such, in our opinion rightly so claimed by the learned counsel for the Petitioner is covered by the Judgment delivered in the case of ***Hanif Karim Luluwale*** (supra). The Division Bench has further observed that the act of 'Bootlegging' or the continuous involvement of the Petitioner in the activity of 'bootlegging' cannot be said to be an act which can be inferred to be deterrent to maintenance of public order. That being so, the detention order, in our opinion, cannot be said to be justified.

14 Writ Petition, accordingly, stands allowed, by quashing and setting aside the impugned detention order dated 21.02.2024.

15 The Petitioner be released forthwith, if not required in any other offence.

(MANJUSHA DESHPANDE, J)

(NITIN W. SAMBRE, J)