



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.90/2024

Ramesh Tarachand Rathod
Aged about 59 years, Occ. Labour,
R/o Gaymukh Nagar,
Tq.- Pusad Distt, Yavatmal ... Petitioner

- Versus -

1. The State of Maharashtra
Through its Secretary, Home Department,
(Special) Mantralaya, Mumbai.
2. The Collector and District Magistrate,
Yavatmal, Tq. and Distt. Yavatmal ... Respondents

Mr. Abhishek Zade, Counsel h/f Mr. Shaharukh Shafik Sheikh,
Counsel for the petitioner.
Mr. S.A. Ashirgade, A.P.P. for respondent No.1 and 2.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT: 16.4.2024.

DATE OF PRONOUNCING THE JUDGMENT 30.4.2024

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. Abhishek Zade, Counsel h/f Mr.
Shaharukh Sheikh, Counsel for the petitioner and Mr. S.A.
Ashirgade, A.P.P. for respondent No.1 and 2.

2. Rule.

3. The petitioner has filed this petition seeking to quash the impugned order of detention dated 24.8.2023 passed by respondent No.2 and confirmed by respondent No.1 on 17.10.2023.

4. Since the year 2005 the detenue has been engaged in the criminal activities of bootlegging such as possessing and selling of illicit liquor. The offences which have been taken into consideration for passing the detention order are of last six months, out of which four are of the year 2023 and the other crimes are old. They are as follows:-

(i) *Crime No.26/2023 for the offence punishable under Section 65(f) of the Maharashtra Prohibition Act registered on 26.01.2023,*

(ii) *Crime No.114/2023 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act registered on 25.03.2023,*

(iii) *Crime No.196/2023 for the offence punishable under Section 65(e) of the*

*Maharashtra Prohibition Act registered on 04.05.2023,
(iv) Crime No.295/2023 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act registered on 27.06.2023.*

All the above four offences are registered at Vasantnagar Police Station.

As mentioned above, the last offence was registered on 27.06.2023 and the detention order was passed by respondent No.2 on 24.08.2023.

5. In the first offence i.e. Crime No.26/2023, the petitioner was found in possession of 60 litres of illicit liquor worth Rs.12,000/- in the drain beside farm of Mr. Namdev Naik, Gaymukhnagar. In the third offence i.e. Crime No.196/2023, the petitioner was raided with 300 litres of liquor worth Rs.30,000/- obtained illegally.

6. Learned Counsel on behalf of the petitioner, Mr. Shaharukh Sheikh submits that except the offences under 65(e)

and 65(f) of the Prohibition Act, the petitioner has not been involved in any offences against human body or property. He further states that the in-camera statements are sans endorsement of the Detaining Authority that it has personally verified those statements and was satisfied with respect of its contents and truthfulness. The only remark seen on in-camera statements is *“opened and seen”*.

7. Learned A.P.P., contends that Section 13 of the Maharashtra Prohibition Act prohibits bootlegging of liquor for sale, consumption or use of liquor, possession of any material thereof for manufacture of liquor and that the detinue was found selling liquor from his residence where he was living on rent in the house of one Ushabai Pande. He was in possession of illicit liquor in his custody. Therefore, it is for the accused to explain this fact which was within his personal knowledge, as to how the illicit liquor came into his house. He further emphasized on the direct and substantive testimonies of P.S.I. Shelke, P.C. Yogesh

Sunkarwar and P.H.C. Ramesh Jadhav. It is submitted that no substantive admission could be brought on record from these testimonies which will enable the accused to create any sort of doubt in the mind of detaining authority. With respect to the in-camera statements, witness “A” stated that because of the petitioner, people in the surroundings used to buy illicit liquor from him regularly, drink it and mess-up the area, molested and even harmed children in the town. In the statement of witness “B”, it is stated that the petitioner came to the village on his motorcycle carrying a plastic can and was selling liquor. All the people screamed loudly, were drunk, urinated and vomited on the side of the house. In view of the above, learned A.P.P. prayed to dismiss the petition.

8. Three offences are considered for passing the order. Except offence under Sections 65(e) and 65(f) of the Prohibition Act the detinue has not been involved in any offence against body or property. It is seen that detaining authority has relied on

these three offences and earlier also the crimes were registered for the offence punishable under Sections 65(e) and 65(f) of the Prohibition Act and the authority has relied on the confidential statement of two witnesses. For these crimes detention of the petitioner was necessary on the ground that the petitioner was habitual bootlegger is argued by the learned A.P.P.

9. For these crimes the Investigating Officer did not think it fit to arrest the petitioner. The notices under Section 41 were issued against the detenue. Arrest for these crimes which are cognizable was possible for the Investigating Officer by recording his requisite satisfaction under Section 41(1)(2)(a) of the Code of Criminal Procedure which lays down that the police officer may without any 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 and the power of Investigating Officer which power was not exercised in

the present case, therefore, it cannot be said that registration of a bootlegging crime against the petitioner provided reasonable material for detaining authority to arrive at its requisite satisfaction. If these three crimes registered against the petitioner are excluded to reach the detaining authority for arriving at its subjective satisfaction then only two in-camera statements would remain. Now if we take a look at the statements we would find from themselves that the incidents mentioned therein had no live link with the object sought to be achieved by passing the detention order.

10. In both the statements the witnesses have stated that they were knowing the detenue and they asked him not to sell the liquor in said area. He had beaten them and gave threats to both of them. The statements are of general nature. The second statement which was recorded of witness "B" is of April 2021. Therefore, there is no live link in said statement. The witness "A" has not mentioned the date of incident, therefore, it cannot be

ascertained that the incident stated therein had occurred in the recent past so as to have any material bearing upon the subjective satisfaction to be reached by the detaining authority. These statements, therefore, would not constitute any relevant material for the purpose of present case.

11. Such being the nature of both statements we do not think that they could have been considered as constituting relevant material for reaching the subjective satisfaction by the detaining authority.

12. The impugned order also does not explain as to how bootlegging activity can be involved in the manufacture of illicit liquor can be presumed to be adversely affecting the public health. On perusal it is seen that two to three C.A. Reports are filed on record. On perusal it appears that the C.A. Reports are not of recent crime. They are of crime registered in the year 2022. There is no presumption in Act or Law that every incident

of disturbance of public health would necessarily result in disturbance of public order. The authorities would be required to satisfy themselves as to how public disturbance would result in disturbance of public order. Such satisfaction has not been reached in the present case.

13. For these reasons we find that the impugned order is bad in law and must go.

14. The writ petition is allowed in terms of prayer clauses (A) and (B).

The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)