



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

CRIMINAL WRIT PETITION NO.104/2024

Rama Devchand Kumbhalkar,
aged 33 Yrs., R/o Satak,
Tq. Parasheoni and P.S. Ramtek
Distt. Nagpur.

... Petitioner

- Versus -

1. The State of Maharashtra,
through its Secretary, Home
Department (Special) 2nd Floor
Mantralaya Madam Cama Road
Mumbai 32.
2. The District Magistrate,
Nagpur, Tq. and Distt. Nagpur.
3. The Superintendent of Police,
Nagpur District (Rural) Nagpur
Tq. and Distt. Nagpur.
4. The Superintendent,
Nagpur Central Prison Nagpur.
5. The Police Station Officer / Inspector
Police Station Ramtek Tq Ramtek
Distt. Nagpur.

... Respondents

Mr. Anand S. Deshpande, Counsel for the Petitioner.
Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 to 5.

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

DATE OF RESERVING THE JUDGMENT: 17.4.2024.

DATE OF PRONOUNCING THE JUDGMENT: 26.4.2024.

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

Heard Mr. Anand S. Deshpande, learned Counsel for the petitioner and Mr. S.S. Doifode, learned A.P.P. for respondent Nos.1 to 5.

2. The petitioner has preferred this petition questioning the preventive detention order passed against him on 2.12.2023 by respondent no.2 under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (for short "MPDA Act"). The said detention order has been issued as, according to the Detaining Authority, the detenue is a bootlegger whose activities are prejudicial to the maintenance of public order. The detention

order is based on one crime i.e. Crime No. 547/2023 registered with Ramtek Police Station for the offence punishable under Section 65(f) of the Maharashtra Prohibition Act and two in-camera statements of confidential witnesses, 'A' and 'B'.

3. Though number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned Counsel appearing for the petitioner has pressed few grounds into service as below:

(i) It is submitted that the last crime i.e. Crime No.547/2023 was registered against the petitioner on 30.7.2023 for which the chargesheet has been filed on 24.8.2023, however, the detention order against the petitioner was passed on 2.12.2023 by respondent No. 2. Thus, there is a delay of 100 days in passing the detention order and further there is no explanation given in the impugned order about such huge delay and, therefore, on this sole count the detention order is liable to be quashed and set aside.

(ii) *It is submitted that the two in-camera statements relied upon by respondent No.2 to draw subjective satisfaction are vitiated inasmuch as the copies of the same are not provided to the petitioner.*

4. The grounds of detention order dated 2.12.2023 mention that the petitioner continued to indulge in criminal activities after he was released on bail in Crime No.547/2023. Learned Counsel for the petitioner submits that, taking into account the given situation, the Learned Magistrate did not approach the competent Court for cancellation of bail.

5. The learned Counsel for the petitioner has relied on the following judgments.

(i) *Criminal Writ Petition No.75/2022 (Hanif Karim Luluwale V/s. State of Maharashtra and others delivered on 28.6.2022,*

(ii) *Criminal Writ Petition No.78/2022 (Chattu S/o Ramjan Naurangabadi V/s. State of Maharashtra and others) delivered on 11.7.2022,*

(iii) *Pesala Nookaraju V/s. Government of Andhra Pradesh and others reported in 2023 SCC OnLine SC 1003,*

(iv) *Ameena Begum V/s. State of Telangana and others reported in (2023) 9 SCC 587,*

(v) *Criminal Writ Petition No.133/2020 (Mohamad Ishaq Mohamad Ismail Shaikh V/s. Sanjay Barve and others) delivered on 28.2.2020 and*

(vi) *Writ Petition (Criminal) No.277/2023 (Rasiya P.M. V/s. State of Kerala and others) delivered on 29.5.2023.*

6. On the contrary, learned A.P.P. vehemently opposed the submissions of the petitioner stating that on perusal of the confidential statements of witnesses it is clear that the detenue's business of illegal distillery set up and selling of mahua flower country liquor, it's supply to the neighbouring villages are causing trouble to the public at large and affecting the surrounding adversely, including his immoral behaviour of spreading terror by continuously quarrelling, giving life threats to the public and roaming armed in the proximity of the area.

He further states that the liquor consumed by people and seized from the detainee contains ethyl alcohol which is harmful to the human body. Altogether, all these activities are sufficient to cause a breach to the maintenance of public order and even disrupting the tempo of day-to-day life.

7. The main contention of the petitioner is that the last prejudicial activity of the petitioner has taken place on 30.7.2023 and the detention order is passed on 2.12.2023 after almost about six months. Thus the live link is snapped and the detention order is illegal.

8. The respondent No.2 has not filed reply in this matter.

9. It is argued by the learned A.P.P. that statements of confidential witnesses were recorded and thereafter immediately

the proposal was sent. The order was passed on 2.12.2023 and there is no delay.

10. The perusal of the record shows that detainee was involved in one crime i.e. Crime No.547/2023 for the offence punishable under Section 65(f) of the Maharashtra Prohibition Act and was released on notice. In-camera statements of witnesses “A” and “B” were recorded in April 2023, the chargesheet in said crime was filed on 24.8.2023 and the detention order is passed on 2.12.2023. There is delay of about 100 days in passing the detention order. There is no explanation in the grounds of detention about said huge delay. On perusal of in-camera statements it reveals that the general statements are made by the witnesses and the copies of said statements were not given to the petitioner.

11. The Hon’ble Apex Court in the case of Pradeep Nilkanth Paturkar vs S Ramamurthi and others reported in **AIR**

1994 SC 656 has observed that the unexplained delay whether short or long, specially when the petitioner has taken a plea of delay, vitiates the detention order. In para 9 of the said exposition in Pradeep Nilkanth Paturkar's case (supra) the Hon'ble Apex Court has referred to its earlier decision in the case of T A Abdul Rahman V/s. State of Kerala reported in (9189) 4 SCC 741 in paragraph 15 as follows:-

“The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the

causal connection has been broken in the circumstances of each case.”

12. So far as the delay is concerned there is no explanation offered by respondent No.2/Detaining authority. Therefore, keeping in view the exposition of law laid down by the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar's case (supra) and since no plausible explanation has been offered by detaining authority for passing the detention order it will have to be held that there was delay in passing the order of detention.

13. In that view of the matter, an irresistible conclusion is that, the order of detention impugned in this writ petition cannot be sustained and, therefore, the impugned order is liable to be quashed and set aside. Hence the following order.

The writ petition is allowed.

The impugned order dated 2.12.2023 passed under Section 3 of the M.P.D.A. Act is hereby quashed and set aside.

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

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)