



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

CRIMINAL WRIT PETITION NO.139/2024

Amar S/o Raju Datar,
aged about 35 Yrs., Occ. Labour,
R/o Rani Amravati, Tahsil Babhulgaon,
District Yavatmal.

... Petitioner

- Versus -

1. State of Maharashtra,
through Department of Excise,
Madam Cama Road, Mantralaya,
Mumbai 400 032.
2. The District Magistrate, Yavatmal,
having office at the Collectorate,
Yavatmal.
3. The Superintendent of State
Excise, Yavatmal, District
Yavatmal.

... Respondents

Mr. A. S. Manohar, Advocate for the Petitioner.
Mr. M.K. Pathan, A.P.P. for Respondent Nos.1 to 3.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 26.6.2024.

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner has filed this petition being aggrieved by the detention order dated 26.12.2023 passed under Section 3 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”).

3. The detention is based upon two offences (i) Crime No.247/2023 for the offence punishable under Sections 65(b), 65(e) and 65(f) and Section 69 of the Maharashtra Prohibition Act and (ii) Crime No.357/2023 for the same offences and two confidential statements.

4. The present petitioner is not involved in the activities which were prejudicial to the maintenance of public order. There is absolutely nothing on record to show that there is any danger to

the public health by the activities of the petitioner. In both the crimes the notice under Section 41 of Cr.P.C. was issued by the Investigating Officer. The I.O. not even considered it necessary to arrest the petitioner. The statement of two witnesses have been recorded which are very vague and do not mention any specific date on which incidents have allegedly occurred. The stale incidents are mentioned which cannot constitute any danger to the public order.

5. The learned Advocate for the petitioner has stated that the Chemical Analyser Report in respect of the items seized in Crime No.357/2023 has not been received and C.A. Report is received only in Crime No.247/2023. There is absolutely nothing in C.A. Report to show any danger to the public order. Thus, the subjective satisfaction reached by the authorities stands vitiated.

6. The statements of both the witnesses have been recorded in the month of August 2023 although the alleged

incidents pertain to the month of June and July 2023. After recording of the statements, the proposal has been forwarded only in the month of November 2023. There is no explanation as to why the statements were not recorded immediately and why they were not forwarded with due discharge. Delay of 5 to 6 months between alleged incidents and impugned order clearly shows that there is no live link. No subjective satisfaction has been reached on the correctness of the verification exercised or as regards the fear in the minds of witnesses.

7. Learned Advocate for the petitioner has relied on the following judgments in support of his argument:-

(i) Prakash Chandrakant Kanjar V/s. State of Maharashtra reported in **2024(1) ABR (CRI) 953,**

(ii) Satyavan Shakha Rathod V/s. Commissioner of Police, Pune City reported in **2024(1) ABR (CRI) 824,**

(iii) Sachin Barkuji Masram V/s. State of Maharashtra reported in **2024(2) ABR (CRI) 265,**

- (iv) Sandeep Govind Pawar V/s. State of Maharashtra reported in **2023(2) ABR (CRI) 385**,
- (v) *Criminal Writ Petition No.1228/2023 (Shri Aniket Raosaheb Hiwale V/s. The State of Maharashtra and another) decided on 2.11.2023*,
- (vi) *Dinesh Kisan Wanjale V/s. State of Maharashtra* reported in **2022(2) ABR (CRI) 290**,
- (vii) *Gajanan Pundlik Londhe V/s. State of Maharashtra* reported in **2023(2) ABR (CRI) 378**,
- (viii) *Vijay Baburao Avhad V/s. State of Maharashtra* reported in **2023(2) ABR (CRI) 291**,
- (ix) *Amol V/s. Commissioner of Police and others* reported in **2023 SCC OnLine Bom 595** and
- (x) *Shamim Makmood Khan V/s K. Venkateshan (Dr.) Commissioner of Police Pune City and others*.

8. Learned A.P.P. has filed reply and reiterated the grounds taken for detention. He has relied on the judgment of Hon'ble Apex Court in the case of Rajendrakumar Natvarlal

Shah V/s. State of Gujarat and others reported in (1988) 3 SCC 153 and Ramesh Balu Chavan V/s. The Commissioner of Police and others reported in 2017 ALL MR (Cri) 3683 to contend that a bootlegger can be detained under the provisions of the MPDA Act not only in case, he is dealing in liquor which as per the report of the expert is harmful to the public health but also in case his activities as bootlegger create a feeling of harm, danger or alarm or a feeling of insecurity among the members of the public. He has requested to reject the petition.

9. Heard both sides and perused the record.

10. On perusal of record it is seen that the detaining authority has relied on two crimes registered against the petitioner under the provisions of Maharashtra Prohibition Act i.e. Sections 65(b), 65(e) and 65(f) which read as follows:-

“65. Penalty for illegal import, etc. of intoxicant or hemp

Whoever, in contravention of the provisions of this Act, or of any rule, regulation or order made

or of any licensee, pass, permit or authorization granted thereunder-

(a)

(b) manufactures any intoxicant other than opium,

(c)

(d)

(e) sells or buys or possesses any intoxicant other than opium or hemp, or

(f) uses, keeps or has in his possession any materials, still utensils, implements or apparatus for the purpose of manufacturing any intoxicant other than opium.”

11. Except for recording that the petitioner is a bootlegger there is no subjective satisfaction holding that the petitioner's activities are harmful or dangerous to public health.

12. The order indicates that the detaining authority has only referred to the C.A. report which states that in the seized samples positive report has been found to have ethyl alcohol. Except for referring particulars of the said C.A. Report detaining authority has not relied upon any cogent material to arrive at the

conclusion that the activities of the petitioner were harmful or injurious to public health.

13. Learned A.P.P. does not dispute that the C.A. Report in Crime No.357/2023 has not been received yet. Section 2 of the MPAD Act provides that the public order shall be deemed to have been affected adversely if any of the activities of any of the persons referred to in Section 2(b) directly or indirectly is causing harm, danger or alarm or feeling of insecurity in the general public. If detaining authorities find that the detinue is indulging in the sale of goods dangerous for human consumption the same should be based on cogent material.

14. In both the cases in which the petitioner has been alleged to have been indulged in activities causing harm to public order, complainant is the Police Constable who had received the information. In both the offences the notices were issued under Section 41 Cr.P.C.. The I.O. did not even think it fit to arrest the petitioner in said offences. Therefore, it cannot be said that the registration of two bootlegging crimes against the petitioner

provided any reasonable material for detaining authority to arrive at its subjective satisfaction.

15. Except two confidential statements no material was available for the detaining authority to reach at its subjective satisfaction as, in said two offences only notices were issued and he was not arrested in any of the offence. If we look at these statements it is very difficult to get that they are supporting to the object sought to be achieved by the preventive laws. Both the statements are about asking detenue not to conduct the business of illicit liquor as customers coming in the shop are creating nuisance and using abusive language and behaving in indecent manner with ladies in said area. When the witnesses asked the customers not to behave in indecent manner and asked petitioner to stop selling liquor in said area, he gave threats to the witnesses by using arrogant language. In both the statements witnesses narrated same story. The detaining authority has not verified the statements which is the requirement. Both the statements are

recorded by Superintendent of State Excise and verified by Inspector of State Excise. The detaining authority is District Magistrate who had not even seen the statements before passing the order. On perusal of original statements we find that there is no endorsement of detaining authority. It is not specifically mentioned that the authority has satisfied itself on the basis of the statements that proposed detenue has created terror in the public mind. No effort was made by the Police Officer to get verification in this regard. The impugned order which is based upon the statements of two witnesses and C.A. Report only could not have been considered as constituting the relevant material for reaching the subjective satisfaction by the detaining authority. It also does not explain as to how the bootlegging activities of the petitioner were affecting the public order adversely. Any bootlegging activity of manufacturing of illicit liquor can be presumed adversely affecting the public order if there is sufficient material available but in fact in this case no material is available to hold that activities of the petitioner would necessarily result in

disturbance of public health. The authorities would be required to satisfy themselves by way of subjective satisfaction as to how the disturbance of public health in this case would result into the breach of public order. Such satisfaction has not been reached in the present case.

16. In view of the above observations we find that impugned order is bad in law and must be quashed and set aside. Writ petition is allowed in terms of prayer clauses (a) and (b).

The petitioner be released forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI,J.)