



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

CRIMINAL WRIT PETITION NO.242/2024

Manohar Govinda Nikalje,
aged About 77 years, Occ. Labour,
R/o Sindkhed (Matala) Distt. Buldhana,
at Present District Prison, Buldhana. ... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary, Home
Department (Special) Mantralaya,
Mumbai
2. The Collector/District Magistrate,
Buldhana, Dist Buldhana. ... Respondents

Shri Mir Nagman Ali, counsel for the petitioner.
Shri A.R. Chutke, A.P.P. for respondent Nos.1 and 2.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 13.8.2024.

ORAL 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 came to be detained vide order dated 26.12.2023 passed by respondent No.2 - District Magistrate, Buldhana in exercise of powers under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short "M.P.D.A. Act") thereby holding that the petitioner's activity is detrimental to the maintenance of public order. The above order is confirmed by respondent No.1 on 13.2.2024.

3. The detention order is questioned on the grounds that there is no satisfaction expressed by the detaining authority that the statements of the confidential witnesses "A" and "B" were true in nature along with non-reproduction of its contents and consideration of stale offences. Total of ten crimes have been relied upon for passing the detention order.

4. All the offences are registered under the provisions of the Maharashtra Prohibition Act, 1949 while in the recent crime i.e. Crime No.0264/2023, charge sheet has not been filed as the Chemical Analyzer's Report is awaited.

5. The learned Advocate for the petitioner pleaded that since almost all the cases are pending before the concerned Courts, it is inappropriate to brand the detenue as a bootlegger. He has further placed reliance on the opinion given in C.A. Report that it is general in nature. The reports were not placed before the authority.

6. On the contrary, Learned A.P.P. submits that the C.A. Reports in the aforesaid offences, committed by the petitioner, would reveal the presence of ethyl alcohol in the seized samples. Further the opinion from the District Civil Surgeon, Buldhana would reveal that consumption of ethyl alcohol in exaggerated amount is harmful to human body and it may cause death. He

further submits that perusal of the statement of witness “A” would reveal that the petitioner not only threatened the witness but also slapped him and brandished a knife upon him for compelling him to pay money. Perusal of the statement of witness “B” would reveal that the petitioner brandished him with knife for obtaining money from him. Both the witnesses due to the fear and terror of the petitioner have not reported the incidence. The confidential statements were recorded by the Sub-Inspector, State Excise in presence of Senior Jailor, Buldhana District Prison and verified by Superintendent, State Excise, Buldhana. It, thus, reveals that the petitioner is a bootlegger and due to his illegal acts the people in the surrounding area are being addicted and the other people are suffering unnecessarily. Thus, looking at the graph of crimes of the present petitioner a violent attitude and habit of selling illegal liquor and repeatedly committing crimes in the surrounding areas create a disturbance to public at large which needs to be considered under the provisions of the M.P.D.A. Act.

7. The learned Advocate for the petitioner has relied on the judgment of this Court in the case of Ratnamala Mukund Balkhande V/s. State of Maharashtra reported in 2022 DGLS (Bom.) 1650. The petitioner was not arrested in any of the offences. Notice has been issued under Section 41(1)(a) of Code of Criminal Procedure against him. He was not convicted in any of the offences. In this regard, reliance is placed on the judgment of this Court in Writ Petition No.326/2023 (Vijay Palasram Rathod V/s. State of Maharashtra and another), decided on 13.9.2023. He has also relied on the judgment of this Court about releasing the accused on notice issued under Section 41(1)(a) of the Code of Criminal Procedure.

8. Learned A.P.P. has also relied on the judgment in the case of Laxman Sharnappa Dindore V/s. The Commissioner of Police, Solapur and others reported in 2018 ALL MR (Cri.) 5153.

9. On perusal of the detention order it appears that the detention order is passed very casually. All the offences since 2021 are considered. The offences are under Sections 65(a) to 65(e). In all these offences notices under Section 41(1)(a) of Cr.P.C. were issued as maximum punishment in said offences is less than seven years. Hence as per the guidelines of Arnesh Kumar V/s State of Bihar reported in **(2014) 8 SCC 273** notices were issued, therefore, there is no question of arresting the detainee.

10. On perusal of the in-camera statements, which are confidential, it is seen that those are not even seen by the detaining authority but surprisingly have been signed by the detainee. The efforts were taken by the detaining authority to separately verify the witness "A" and "B" but said verification is also signed by the detainee. The purpose of confidential statements to keep the name of witnesses confidential is frustrated. Both the statements are of general nature. The statements were recorded on 8.8.2023 and in said statements

incidents are mentioned of January 2023 and March 2023. The last offence occurred on 1.6.2023 and the order is passed on 26.12.2023 which was confirmed on 13.2.2024. There is inordinate delay in passing the order from the last date of occurrence of incident. The statements are also not supporting. Confidential statements which are recorded and considered also mention Crime of January 2023 and March 2023. The stale offences are considered. There is no live link between the last offence committed by the petitioner and the impugned order dated 26.12.2023.

11. The learned Advocate for the petitioner has relied on the judgment of the Hon'ble Apex Court in the case of Khaja Bilal Ahmed V/s. State of Telangana and others reported in **2019 DGLS (SC) 1677** in support of his argument that there is no live link and stale cases are considered for passing the detention order.

“15. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the “antecedent criminal history and conduct of the appellant”. The order of detention records that a “rowdy sheet” is being maintained at

PS Rain Bazar of Hyderabad City and the appellant “could not mend his criminal way of life” and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were “referred by way of his criminal background... (and) are not relied upon”. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 “are not at all considered for passing the detention order” and were “referred by way of his criminal background only”. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of

detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

12. On perusal of F.I.R. it reveals that instead of considering the offences prior to 6 months all the offences are considered while passing the detention order. The offences since 2021 to 2023 i.e. 10 offences are considered for passing the detention order and the preventive action taken by the authorities.

13. Learned A.P.P. has relied on the judgment in the case of Machindra Dnyanoba Jadhav V/s. The State of Maharashtra and others reported in 2021 ALL M.R. (cri) 3198.

“21. However, in the case of Kanuji S. Zala Vs. State of Gujarat 1999 DGLS (SC) 555, the Hon'ble Supreme Court has held that

"(5) What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. The observation made by this Court in Om Prakash Vs. Commissioner of Police & Ors. - 1988 Supp. (2) SCC 576 that "as in Piyush Mehta Case, the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act and as such, the order is liable to be quashed" are to be understood in the context of the facts of that case. (6) As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public

order has also disturbed on some occasions. In view of the material on record it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

14. There is no satisfaction expressed by the detaining authority that alleged liquor manufactured by the petitioner is dangerous to public health.

15. As the confidential statements are signed by the petitioner it cannot be considered and the stale cases are considered by the detaining authority. There is no subjective satisfaction about bootlegging activity amounting to disturbance of public order. Though some C.A. Reports are filed on record and opinion is given, all the C.A. Reports are not filed on record. In Crime No.0264/2023 C.A. Report is not available. The cases on which the reliance was placed and detention order was passed, the report from Forensic Science Laboratory is not made available. Therefore, relying on said offence detention order cannot be passed.

16. The detention order does not mention the gist of confidential statements which the petitioner has received which is filed along with this petition. Considering all these shortfalls and observations made by the Hon'ble Apex Court and this Court in different cases, the order passed by the detaining authority is required to be quashed and set aside and is accordingly quashed and set aside.

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

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)