



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

CRIMINAL WRIT PETITION NO.397/2024

Ajabrao S/o Dattarao Payghan,
aged about 45 Yrs., Occ. Agriculturist,
R/o At Post Anjankheda, Tah. & Distt.
Washim.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Chief Secretary, Home
Department, Mantralaya,
Mumbai-32.
2. District Magistrate,
office at Collector and District
Magistrate, Washim, Distt. Washim.

... Respondents

Mr. Amol Jaltare, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 9.9.2024.

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

Heard Mr. Amol Jaltare, learned Advocate for the
petitioner and Mr. S.S. Doifode, A.P.P. for respondent Nos.1
and 2. **Rule.**

2. The petitioner has challenged the detention order passed on 5.3.2024 by respondent No.2 and confirmed on 8.5.2024 by respondent No.1 on receiving the report of Advisory Board.

3. Learned Advocate for the petitioner has taken us through the impugned order and material which was supplied to the petitioner by the detaining authority after passing of the order. It is submitted that though several cases were registered against the petitioner the detaining authority has taken into consideration three offences i.e. Crime Nos.417/2023, 462/2023 and 484/2024. All the offences are punishable under Section 65(e) of the Maharashtra Prohibition Act. These cases are stated to be pending for the investigation. The detaining authority though mentioned the earlier offences but wrongly shown that they are pending for trial. In three offences the petitioner is acquitted and in two offences he was discharged. The detaining authority has contended that since the petitioner is carrying out activities of

storing illicit liquor he is a bootlegger within the meaning of Section 2(b) 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, however, the grounds of detention would show that there was no subjective satisfaction arrived at by the detaining authority. The C.A. reports are stated to be received stating that the samples taken show that it contains ethyl alcohol yet further report of such liquid showing that it was hazardous for human consumption is not produced on record and not supplied to the petitioner. The statements of two confidential witnesses were recorded which are stereotyped statements.

4. It is argued by the petitioner that there is delay in passing the order. He has stated that the last crime was registered against the petitioner on 23.11.2023 and the order is passed on 5.3.2024. There is no explanation in the grounds of detention

about the delay in passing the detention order. Said delay has not been explained and, therefore, the order passed by the detaining authority is illegal and it is confirmed by the State Government without considering the representation that was presented by the petitioner as such the said confirmation is also illegal.

5. The learned Advocate for the petitioner has relied on the following judgments:-

(i) Vishal Narbad Kanoje V/s. State of Maharashtra, through Home Department (Special) and others reported in 2024 SCC OnLine Bom 2479,

(ii) Criminal Writ Petition No.1062/2024 (Kunal Babulal Jaiswal V/s. District Magistrate, Nanded and others), dated 6.8.2024,

(iii) Shivkumar Madeshwaran Devendra V/s. State of Maharashtra, through Secretary Home Department (Special) and others reported in 2022 SCC Online Bom 1236,

(iv) Devidas Lalji Ade V/s. The State of Maharashtra and others reported in 2023 ALL MR (Cri) 130,

(v) Shekh Kasam S/o Shekh Shekhi V/s. State of Maharashtra and another reported in 2023 ALL MR (Cri) 190,

(vi) Amanulla Khan Pathan V/s. State of Gujarat and others reported in 1995(5) SCC 613 and

(vii) Mustakmiya Shaikh V/s. M.M. Mehta reported in 1995(3) SCC 237.

6. Learned A.P.P. has strongly opposed the petition. Respondent No.2 has not filed affidavit-in-reply on record.

7. Learned A.P.P. has denied that the detention order is mechanically passed regarding the detention of the petitioner. The subjective satisfaction was arrived at on the basis of documents produced with proposal stating the facts in the cases pending before the Court of law and the C.A. reports. The subjective satisfaction is on the basis of all the three offences and two in-camera statements of the witnesses. The petitioner has raised issue of public order and in spite of preventive action his activities in bootlegging are not curtailed and, therefore, the detaining authority has no option but to detain him under the provisions of law.

8. Learned A.P.P. has relied on the following judgments:-

- (i) Mohsin Anwar Khan @ Shaikh V/s. Commissioner of Police, Pune and others reported in **2023 ALL MR (Cri) 3785**,
- (ii) Vinod Dhannulal Jaiswal V/s. District Magistrate, Aurangabad reported in **2024 ALL MR (Cri) 680**, and
- (iii) Badal s/o Manoj Sahare V/s. State of Maharashtra and others reported in **2024 ALL MR (Cri) 102**.

9. We would like to consider the legal position as summarized above whether the detaining authority while passing the order had followed the procedure as contemplated or not is itself reiterated by the Hon'ble Supreme Court in Nevanath Bujji etc. holding that if the procedure as contemplated is not followed the detention order cannot be sustained and, therefore, strict compliance is required to be made as it is a question of liberty of a citizen.

10. In case of Nevanath Bujji etc. V/s. State of Telangana and others reported in **2024 SCC Online SC 367** the Hon'ble Apex Court after considering the various judgments has summarized the legal position which is as under:-

“43. We summarize our conclusions as under: -

(i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) *While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,*

(vi) *The satisfaction cannot be inferred by mere statement in the order that “it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order”. Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,*

(vii) *Inability on the part of the state’s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,*

(viii) *Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and*

(ix) *To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention . For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to*

the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

11. The ground which was raised by the petitioner is that there is a delay in passing the order of detention. It has to be noted that the last offence is stated to have been committed on 23.11.2023 and the detention order is passed on 5.3.2024 and confirmed on 8.5.2024. The delay has not been explained by the detaining authority as no affidavit is filed on record. Learned A.P.P. has argued that this ground is not raised while challenging the detention order. Since it is a law point it can be certainly argued. Further point of delay is to be appreciated on the basis of facts. However, the facts should have been placed on record by the respondents and could have been considered as necessary to answer the point raised. We are convinced with the fact that delay cannot be counted from the date of commission of last offence but some times we can say that when the in-camera statements are recorded, verified and seen by the detaining authority and,

therefore, starting point of delay would start from the date the detaining authority considers all statements.

12. On perusal of the statements, it is seen that they are recorded on 13.2.2024 and verified by the Sub-Divisional Officer on 16.2.2024. It is seen by the detaining authority on 1.3.2024. Though the point would start from the date the detaining authority considers the statements there is no explanation why the statements were not verified till 1.3.2024 though were recorded on 13.2.2024. It is seen by the detaining authority only about after one month. Though we consider that the time starts from the date of verification as there is no convincing reasons given by the authority as to why it was pending with authority after recording it. The statements are also of general nature. Moreover, the petitioner has filed on record certificate issued by the Sarpanch of Grampanchayat. The Sarpanch has issued the certificate on 21.3.2024 about the character of petitioner and the villagers have also given the signatures about his character that he

is a very honest person and he is peace loving, he had no dispute with any villager. Maximum villagers have signed the said certificate which falsify the statements of confidential witnesses “A” and “B”. As we are convinced that the authority has not taken into consideration the acquittal and discharge orders in earlier offences and as there is delay in passing the detention order, it is sufficient to set aside the order of the detaining authority. Hence we pass the following order:-

- (i) The writ petition is allowed.
- (ii) The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)