



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

CRIMINAL WRIT PETITION NO.422/2024

Dinesh S/o Narayandas Mata,
aged 33 Yrs., presently in Central Jail,
Resident of Sindhi Colony, Pulgaon,
Tah. Deoli, Distt. Wardha.

... Petitioner

- Versus -

1. State of Maharashtra,
through Principal Secretary,
Department of Home,
Mantralaya, Mumbai.
2. District Magistrate & Collector,
District Wardha.
3. Superintending of Police,
District Wardha.
4. Sub-Divisional Police Officer,
Sub-Division, Pulgaon,
Tah. Pulgaon, Distt. Wardha.
5. The Police Inspector,
Police Station, Pulgaon,
Tah. Pulgaon, Distt. Wardha.

... Respondents

Mr. M.P. Kariya, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 to 5.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 16.12.2024.

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

Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2. The petitioner has challenged the order passed by the District Collector, Wardha dated 2.4.2024, detaining the petitioner in exercise of powers under the provisions of Sub-Sections (1) and (2) of Section 3 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”).

3. The detention order is based on total 9 offences, three committed within six months from passing of the detention order for the offences punishable under Sections 65(a), (e), 77(a) and 83 of the Maharashtra Prohibition Act read with Section 3(1), 181, 130 and 177 of the Motor Vehicles Act. In para 9, the

detaining authority has recorded a finding that the detention order is based on the offences committed in the last six months, however, it has also considered the offences allegedly committed by the petitioner in last three years as per para 9.4.

4. The learned Advocate for the petitioner has stated that stale offences are considered. The material which is considered for recording the subjective satisfaction is without any legal basis. According to the petitioner, apart from next three offences, the Detaining Authority has also considered six offences during the period of three years under the provisions of the Maharashtra Prohibition Act and the Motor Vehicles Act.

5. The learned Advocate for the petitioner would urge that in the offences which were considered by the detaining authority, the report from the Forensic Science Laboratory was not made available. As such, he would urge that the order of detention suffers from non-application of mind. According to

him, in absence of such material it could be inferred that the conduct of the petitioner in the aforesaid recently registered offences cannot be construed to be violating the 'public order'. Though 25 offences were registered against the petitioner in 13 offences he was acquitted. The petitioner has relied on number of judgments in support of his argument and the different grounds raised by him in the petition. Though many grounds are raised by the petitioner, the ground of non-availability of C.A. report in the offences which were considered by the detaining authority is pressed by the learned Advocate for the petitioner. This Court in the matter of Nilesh Charandas Gaikwad V/s. State of Maharashtra and another decided on 27/06/2022 in Criminal Writ Petition No.804/2021 has observed as under:-

"4. The crimes which have been taken into consideration for reaching a conclusion for continuous activities of the petitioner prejudicial to the public order are Crime No.192 of 2021 registered under Sections 65(c)(d) and (f) and 83 of the Maharashtra Prohibition Act, 1949 and Crime No.250 of 2021 registered under Section 65(c) and (d) of the said Act at Police Station Babhulgaon. In both these crimes, the Chemical Analyzer's report is awaited and if that is so, as rightly submitted by the learned counsel for the petitioner, no conclusion

about prima facie involvement of the petitioner in these crimes could be arrived at, and if that is so, no further conclusion regarding involvement of the petitioner in prejudicial activities could be arrived at. This is also the view taken by the Supreme Court in the case of District Collector Ananthapur and another v. V. Laxmanna, reported in 2005 ALL MR (Cri) 1800 (S.C.)."

For the aforesaid reasons, the learned Advocate for the petitioner has prayed to allow the writ petition.

6. While countering the aforesaid submissions, Mr. Doifode, learned A.P.P. would urge that the continuous activities of the petitioner of indulging into the offences punishable under the provisions of Maharashtra Prohibition Act and the Motor Vehicles Act has rightly prompted the respondent-authority to invoke the provisions for ordering detention of the petitioner under the provisions of the M.P.D.A. Act.

7. According to Mr. Doifode learned A.P.P. for the respondents, all the FSL reports pertaining to earlier offences were made available. He has argued that continuous involvement of the

petitioner in the offences punishable under the Maharashtra Prohibition Act, 1949 and the Motor Vehicles Act speaks of criminal mind of the petitioner. He would further urge that the Forensic Science Laboratory Reports in earlier offences were made available to the detaining authority. In that view of the matter, the District Magistrate was justified in ordering the detention by recording subjective satisfaction. As such, Mr. Doifode, learned A.P.P. would urge that the availability of reports from Forensic Science Laboratory in relation to earlier offences sufficiently prompted the detaining authority to record its subjective satisfaction. In such an eventuality, the order of detention cannot be said to be vitiated. Mr. Doifode, learned A.P.P. would further urge that once there is consistency in the conduct of the petitioner of involvement in the offences punishable under the Maharashtra Prohibition Act, 1949 and Motor Vehicles Act, the detaining authority was justified in ordering the detention of the petitioner. As such, he would urge that petition is liable to be dismissed.

8. We have considered the rival submissions.

9. With the assistance of the learned Advocate for the petitioner and the learned A.P.P., we have perused the detention order dated 2.4.2024 which considered three offences which took place during last six months along with it six other offences are taken into consideration which took place in last 3 years punishable under the provisions of the Maharashtra Prohibition Act and the Motor Vehicles Act. If we consider the recently registered offences against the petitioner, which were considered by the detaining authority while passing the detention order, in the said offences C.A. reports are not received or made available is a fact which is not disputed. As such, it has to be inferred that before passing the detention order, the detaining authority was not conscious of the fact as to absence of report from the Forensic Science Laboratory in relation to the petitioner's involvement in offences of bootlegging.

10. As a consequence of above, the detaining authority while considering the material as regards the recently registered three offences against the petitioner punishable under the provisions of the Maharashtra Prohibition Act and the Motor Vehicles Act, in addition to earlier offences, ought not to have formed basis for ordering detention. The subjective satisfaction recorded by the detaining authority for ordering detention *sans* consideration of the aforesaid issue i.e. absence of report from the Forensic Science Laboratory in the recently registered offences and ought not to have formed basis for ordering the detention of the petitioner.

11. The Hon'ble Apex Court in the matter of *District Collector, Ananthapur V/s. V. Laxmanna* reported in **2005 DGLS (SC) 2745** in Paragraph Nos.7 and 8 has made following observations:-

"7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the

maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of the such material should be given to the detenu."

12. Drawing support from the Hon'ble Apex Court Judgment referred above, it has to be held that the offences which

are punishable under the provisions of the Maharashtra Prohibition Act could be effectively dealt with under the said Act. Hence such an act of committing an offence or involving into the offence punishable under the aforesaid Act cannot be said to be detrimental to the maintenance of the public order.

13. If we consider the statements of secret witnesses “A” and “B” it appears that they do not create any ‘public order’ situation. As per both the statements of the witnesses when they went to have a discussion with the petitioner to control his customers, he quarrelled with them and abused them in a filthy language. Therefore, the said statements cannot be considered to be disturbing the ‘public order’.

14. Apart from the above, fact remains that the report of the Chemical Analyzer for bringing home the guilt of the accused is necessary for proving the offence under the Maharashtra Prohibition Act. In absence of such report, it cannot be presumed

or cannot be said to have provided basis for recording subjective satisfaction so as to infer a strong case against the accused like petitioner. In absence of report of the Chemical Analyzer / report from the Forensic Science Laboratory, gravity or seriousness of the prosecution case loses its significance. In this background, it cannot be said that the recent offences punishable under the Maharashtra Prohibition Act can be said to be relied on for recording subjective satisfaction by the detaining authority.

15. Admittedly, in the case in hand, the report of Chemical Analyzer is neither made available to the detaining authority nor brought before this Court.

16. Further if the offences are seen which are considered for passing the detention order it is apparent that 9 offences are considered out of which 6 offences are stale offences i.e. they have been committed in last three years. Therefore, no reliance can be placed on those stale offences. In respect of recently registered offences apart from absence of C.A. report there is also a delay as

the last offence was registered on 27.2.2024 and the detention order was passed on 2.4.2024 which vitiates the subjective satisfaction arrived at by the detaining authority.

17. For the aforesaid reasons, the order of the detention dated 2.4.2024 of the petitioner stands vitiated and is accordingly quashed and set aside.

The petition stands allowed in terms of prayer clause (i).

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

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)