



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

CRIMINAL WRIT PETITION NO.526/2024

Kacharu Kisan Mane,
aged about 48 Yrs., Occ. Agriculture
Labourer, R/o Amani, Tq. Malegaon,
Distt. Washim (presently in Central
Jail, Nagpur.)

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary, Department
of Home, Mantralaya, Mumbai.
2. Collector and District Magistrate,
Washim.
3. Superintendent of Police,
Washim.

... Respondents

Mr. R. S. Kurekar, Advocate for the Petitioner.
Mr. M.K. Pathan, Additional Public Prosecutor for Respondent
Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 27.11.2024.

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

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

2. The petitioner has challenged the order dated 24.4.2024 passed by the respondent No.1 detaining authority under the provisions of 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”) and the committal order dated 5.3.2024 passed by the respondent No.2 / District Magistrate, Washim.

3. The challenge to the detention order is on the ground that the material which is considered for recording the subjective satisfaction by the detaining authority is without any legal basis.

4. Learned Advocate for the petitioner would invite our attention to the contents of the detention order so as to

substantiate the said claim. According to him, two offences have been considered for passing the detention order. Though the earlier offences prior to 2021 are mentioned in the detention order, but only the offences which are alleged to have been committed by the petitioner before six months of passing the detention order as well as two confidential statements of witnesses are considered for passing the detention order. Both the said offences i.e. Crime Nos.48/2024 and 158/2024 are punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949.

5. Learned Advocate for the petitioner would urge that in both these offences which were considered by the detaining authority while passing the detention order, C.A. reports were not made available. As such he would urge that detention order suffers from non-application of mind. According to him, in absence of the said reports, it cannot be said that the conduct of the petitioner in such recently registered offences can be construed to be violating the 'public order'. It is the contention

of the petitioner that on this count alone, the detention order can be said to be illegal and needs to be quashed and set aside. Therefore, he has prayed to allow the writ petition.

6. *Per contra*, learned Additional Public Prosecutor would urge that the continuous activities of the petitioner being involved in committing offences under the provisions of Maharashtra Prohibition Act had rightly prompted the respondent authority to invoke the provisions of the M.P.D.A. Act for passing the detention order. According to him, though C.A. reports of these offences were not made available before the respondent Nos.1 and 2, in earlier offences the C.A. reports were made available and they were found containing ethyl alcohol which is dangerous to health. The continuous involvement of the petitioner in the said offences under the Maharashtra Prohibition Act speaks of criminal conduct of the petitioner. As the C.A. reports in earlier offences were made available, the detaining authority was justified in ordering the detention of the

petitioner by recording its subjective satisfaction. In such an eventuality, the order passed of detention cannot be said to be vitiated. Therefore, he prayed to dismiss the petition.

7. We have appreciated the submissions canvassed by the learned Advocates for the parties. With their assistance, we have perused the detention order dated 24.4.2024.

8. The detention order considers the criminal history of the petitioner of having involvement in earlier offences under the Maharashtra Prohibition Act. Recent two offences i.e. Crime Nos.48/2024 and 158/2024 were considered for passing the detention order. It is the contention of the learned Advocate for the petitioner that the reports of the Forensic Science Laboratory in the said offences were not made available to the detaining authority and as such it has to be inferred that before passing the detention order, the detaining authority was not conscious of the fact that in absence of C.A. reports in relation to the petitioner's

involvement in the said offences of bootlegging, the petitioner can be lawfully detained.

9. While considering the recently registered two offences against the petitioner punishable under Section 65(e) of the Maharashtra Prohibition Act, C.A. reports in relation to earlier offences allegedly committed by the petitioner, ought not to have formed basis for ordering detention. The subjective satisfaction recorded by the detaining authority for ordering the detention *sans* consideration of the aforesaid issue i.e. absence of C.A. reports from Forensic Science Laboratory in recently registered offences i.e. Crime Nos.48/2024 and 158/2024.

10. The Hon'ble Apex Court in case of District Collector, Ananthapur V/s. V. Laxmanna reported in **2005 DGLS (SC) 274** in paras 7 and 8 has observed as under:-

“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.”*

11. As per the guidelines of the Hon'ble Apex Court in District Collector, Ananthapur (supra), it has to be held that the offences which are punishable under the provisions of Maharashtra Prohibition Act could be effectively dealt with under the said Act and, therefore, would not attract detention under the M.P.D.A. Act. Hence such an act of committing the alleged offences involving the offences punishable under the Maharashtra Prohibition Act cannot be said to be detrimental to the maintenance of 'public order'.

12. 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 the petitioner. In absence of report of the Chemical Analyzer / report from the Forensic Science Laboratory, gravity or seriousness of the prosecution case losses 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 the subjective satisfaction by the detaining authority.

13. Admittedly in the case in hand, the report of Chemical Analyzer regarding the recent offences which are taken into account while passing the detention order, is neither available with the detaining authority nor is brought before this Court.

14. Two confidential statements on which the detaining authority had relied upon for passing the detention order are of general nature. The statements given by the confidential witnesses do not speak about disturbing the public order. Therefore, said statements could not have been considered for passing the detention order. Moreover, in absence of report of Chemical Analyzer the prosecution case loses its significance.

15. In this backdrop, the order of detention of the petitioner stands vitiated and is accordingly quashed and set aside.

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

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)