



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

CRIMINAL WRIT PETITION NO.551/2024

Narendra S/o Shamrao Amreshwar,
aged about 38 Yrs., Occ. Labour,
R/o Palasgaon (Jat), Tah. Sindewahi,
Distt. Chandrapur (Presently in Jail).

... Petitioner

- Versus -

1. The State of Maharashtra,
Home Department (Special),
through its Section Officer, Second
Floor, Main Building, Mantralaya,
Mumbai-32.

2. Collector & District Magistrate,
Distt. Chandrapur.

... Respondents

Mr. Rajas P. Durge, Advocate for the Petitioner.
Mr. S.S. Doifode, Additional Public Prosecutor for the
Respondent Nos.1 and 2.

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

DATED: 4.12.2024.

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 detention order dated 31.3.2024 passed by the respondent No.2 - the Collector and District Magistrate, Chandrapur under 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”) which is confirmed by the respondent No.1 vide order dated 28.5.2024.

3. The petitioner is detained as a bootlegger. The petitioner has questioned the detention order on many grounds *inter alia* the material which is considered for recording the subjective satisfaction is without any legal basis. His right under Article 22(5) of the Constitution of India is violated as the confidential statements recorded while passing the detention order were not supplied to him. He has stated that the in-camera statements “A” and “B” were never supplied to him and, therefore,

he is deprived of making an effective representation. Hence, the petitioner's right to communicate and his right to make effective representation, which is guaranteed under Article 22(5) of the Constitution of India, is violated.

4. The learned Advocate for the petitioner has invited our attention to the contents of the detention order to substantiate the said claim. According to him, two offences which are considered while passing the detention order are Crime No.3/2024, registered on 5.1.2024, punishable under Sections 65(b), (c), (e) and (f) of the Maharashtra Prohibition Act and Crime No.37/2024, registered on 10.2.2024, punishable under Section 65(f) of the Maharashtra Prohibition Act.

5. The learned Advocate for the petitioner would urge that in both the offences, which were considered by the detaining authority while passing the detention order, reports of Forensic Science Laboratory were not made available. As such, he would

urge that the 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 the aforesaid registered offences can be construed to be violating the 'public order'. Therefore, he has prayed to allow the writ petition.

6. While countering the submissions made by the learned Advocate for the petitioner, learned Additional Public Prosecutor would urge that the detention order has been passed after considering the entire record and necessary material and after coming to the conclusion that the petitioner's activities were prejudicial to the maintenance of public order, the order of detention was passed. The C.A. reports in earlier offences, were made available to the detaining authority, though C.A. reports in recently registered offences, which are considered while passing the detention order, were not made available. It is submitted that the detaining authority has rightly passed the detention order against the petitioner. Hence, he has prayed to dismiss the petition.

7. We have appreciated the rival submissions canvassed by the learned Advocates for the parties and with their assistance, we have perused the detention order dated 31.3.2024.

8. The detention order considers the criminal history of the petitioner of having involvement in earlier offences which were registered since 2019 under the Maharashtra Prohibition Act. There are series of offences registered under the Maharashtra Prohibition Act against the petitioner. Recently registered two offences i.e. Crime Nos.3/2024 and 37/2024 were considered by the detaining authority 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 of absence of C.A. reports in relation to the petitioner's involvement in the said

offences of bootlegging, under such circumstances, the petitioner cannot be lawfully detained.

9. While considering the recently registered two offences against the petitioner i.e. Crime Nos.3/2024 and 37/2024 punishable under the provisions 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 of the petitioner. 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, as referred above.

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 as such would not attract detention under the M.P.D.A. Act. 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. Further, 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 the 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.

13. Another ground which the petitioner has raised is of not supplying the copies of statements of the confidential witnesses. We agree with the submissions made by the learned Advocate for the petitioner that as a result of non-furnishing of in-camera statements, the detenue is deprived of making effective representation. Such an act on the part of the detaining authority also violates the right guaranteed to the petitioner under Article 22(5) of the Constitution of India. In our opinion, these two grounds are sufficient to quash and set aside the impugned detention order passed by the detaining authority.

14. For the aforesaid reasons, the writ petition stands allowed in terms of prayer clause (ii).

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Tambaskar.