



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.559 OF 2024

Rafik Sheku Bhagatwale, Tq. Magrulpir, Dist. Washim

-vs-

The District Magistrate, Washim and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri Tejas Deshpande, Advocate for petitioner.

Smt M. H. Deshpande, Additional Public Prosecutor for respondent Nos.1 and 2.

CORAM : NTIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.

DATE : November 25, 2024

P. C.

1. Heard.

2. The challenge raised in this writ petition is to the detention order and consequential committal order dated 24/04/2024 whereby the District Magistrate, Washim in exercise of powers under Section 3 of the Maharashtra Act No.IV of 1091 viz. Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Back-Marketing of Essential Commodities Act, 1981 (for short, 'the Act of 1981') has ordered the detention of the petitioner. The petitioner is termed as a Bootlegger within the meaning of Clause (b) of Section 2 of the Act of 1981 and his acts are termed as prejudicial and affecting adversely for maintenance of the public order within the meaning of Section 2(a)(ii) of the Act of 1981.

3. Admittedly in both these offences report of Chemical Analyser is not produced before the Detaining Authority. The detaining authority claims to have relied on the opinion of the doctor so as to infer that the material which was seized in aforesaid two offences can have an

adverse effect on the person who is likely to consume it.

4. The fact remains that the two in-camera statements in addition to above two offences are also taken into account.

5. If we consider the nature of offences which are relied on by the detaining authority so as to order detention, we fail to understand as to under what authority the doctor, in absence of report of chemical analysis has opined that consumption of the material which was seized from the detainee i.e. the petitioner was harmful to the person who may consume the same.

6. In such an eventuality, we are of the view that the two offences which are relied on, cannot be said to be sufficient enough in absence of Chemical Analyser's report to record subjective satisfaction that the petitioner's activity is dangerous one.

In that view of the matter, having regard to the provisions of Sections 2(a)(ii) and (b) of the Act of 1981, the petitioner cannot be said to be a bootlegger so as to record the subjective satisfaction of his conduct being prejudicial to the maintenance of the public order.

7. The fact remains that absence of Chemical Analyser's report is also not disputed by the detaining authority as can be inferred from the language of the impugned order.

Support can also be drawn from the observations in paragraph 7 of the Judgment of this Court in Criminal Writ Petition No.78/2022 (*Chattu s/o Ramjan Naurangabadi vs. the State of Maharashtra and ors.*) which reads thus :

“ 7. Then, although eight crimes have been registered against the petitioner and all of them have been considered as constitution relevant material for reaching subjective

satisfaction, we find that at least in three of them, no cognizance could have been for want of report of chemical analysis indicating that what was seized from the petitioner was prohibited liquor. Ca reports in these crimes are still awaited. So, the offences which ought not to have been considered by the detaining authority have been considered for reaching the subjective satisfaction. For this reason also the impugned order suffers from the vice of non-consideration of relevant material. We thus find great substance in the petition.”

8. Apart from above, even the two in-camera statements, in isolation, cannot be relied upon and formed to be the basis for recording subjective satisfaction for passing the detention order in the aforesaid offences.

9. That being so, we are of the view that the impugned detention order dated 24/04/2024 is not sustainable and is liable to be quashed and set aside. That being so, the petition stands allowed in terms of prayer clause (a).

(Mrs Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)