



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

CRIMINAL WRIT PETITION NO.600/2024

Anmol Mahadev Ghodichor,
aged about 47 Yrs., Occ. Business,
R/o Sant Sajjan Ward, Railway Station,
Tirora, Gondia, Maharashtra - 441 911.
(Presently in Central Prison at
Nagpur)

... Petitioner

- Versus -

1. The State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Government of
Maharashtra, Mantralaya, Mumbai-32.

2. District Magistrate, Gondia.

... Respondents

Mr. Nirav S. Padia, Advocate for the petitioner.
Mr. M.K. Pathan, A.P.P. for respondent Nos.1 and 2.

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

DATE OF RESERVING THE JUDGMENT: 14.12.2024.

DATE OF PRONOUNCING THE JUDGMENT: 20.12.2024.

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

Rule. Rule made returnable forthwith. Heard finally

with the consent of learned Advocates for the parties.

2. This petition is filed to challenge the order dated 12.4.2024 passed by the respondent No.2-District Magistrate, Gondia detaining the petitioner under sub-section (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"). The said order of detention was confirmed on 7.6.2024 by the respondent No.1 under Section 12(1) of the said Act.

3. Perusal of the detention order indicates that the detaining authority has relied upon a single offence i.e. Crime No.104 of 2024, dated 28.2.2024 registered against the petitioner punishable under section 65(E) of the Maharashtra Prohibition Act and the two in-camera statements of witnesses "A" and "B".

4. The said crime alleges that the Police Head Constable Shriram Tembhare during the prohibition duty got information

that the petitioner was making and selling illicit liquor. Upon receiving such information, the complainant raided the petitioner's house with police staff along with the Panch witnesses and seized 20 litres of illicit liquor in two plastic tubs and other equipments used for distilling liquor. The liquor was worth Rs.100/- per litre, therefore, total liquor of Rs.2000/- was seized. The petitioner was issued notice under Section 41(1) of the Code of Criminal Procedure.

5. The statements of the confidential witnesses were recorded which show that the detenu distilled and sold illicit liquor to the youth which increased the possibility of alcohol addiction among the young members of the locality as well as the villagers around the vicinity of Police Station, Tirora, district Gondia. When the witness "A" was discussing with a group of people of the ward against illegal liquor and the harmful impact of other social businesses arising out of it, it was heard by the petitioner and he started abusing the said witness in filthy

language. Witness “B” stated that the petitioner has a business of lodging where he illegally allows minors to stay in his lodge. Thus, there is a possibility of giving shelter to criminals by the petitioner.

6. The learned Advocate for the petitioner has raised following grounds to challenge the detention order:

(a) Since only one recent crime was taken into consideration for passing the detention order i.e. Crime No.104/2024 which is under investigation, it could not have formed the basis for the respondent No.2 to conclude that the proposed detenu i.e. petitioner is a dangerous person.

(b) The copies of the in-camera statements to support the contents made therein were not provided to the petitioner.

(c) There is a delay of forty five days in passing of the detention order i.e. 12.4.2024 and registration of crime i.e. 28.2.2024.

7. Mr. Padia, the learned advocate for the petitioner would urge that the reasons set out in the order of granting bail were not considered by the detaining authority. He further submitted that the alleged earlier offences and the recent offence which is considered for passing the detention order are bailable in nature. Therefore, the detention order is illegal and arbitrary.

8. *Per contra*, the learned A.P.P. in response to the grounds raised by the petitioner vehemently opposed the submissions of the petitioner and contended that the recent crime i.e. Crime No.104/2024 is under investigation and the earlier offences registered against the petitioner are sufficient to draw an inference that the petitioner is carrying out bootlegging activities continuously. Preventive action had been taken against him earlier under section 107 of Cr.P.C.

The learned A.P.P. further submitted that the ground No.9 of the grounds of detention order clearly shows that the S.D.P.O, Gondia had verified the correctness and truthfulness of

the statements of the confidential witnesses and the statements were also seen by the detaining authority.

9. On the aspect of delay, the learned A.P.P. has relied on the judgment of the Hon'ble Apex Court in the case of Priyanka Pandit Fulore Vs. The State of Maharashtra and others reported in (2002) 9 SCC 714 wherein the Hon'ble Supreme Court was pleased to dismiss the writ petition wherein there was a gap of five months in passing the detention order and the last prejudicial activity committed by the detenu. The learned A.P.P. submitted that the chargesheet in the aforesaid crime clearly reveals that the petitioner is a bootlegger. The Chemical Analyzer's report of the samples seized in the said crime shows the presence of ethyl alcohol in higher percentage. The opinion of the Medical Officer, Sub-District Hospital, Tirora discloses that such quantity of alcohol is dangerous to public health. Therefore, the acts of the petitioner are likely to disturb the 'public order' and upon a perusal of the number of bootlegging offences coupled with the in-camera statements, it is sufficient for the detaining authority to

draw an apprehension that the petitioner is likely to disturb the 'public order'. Thus, the order of detention is appropriate and legal.

10. We have considered the rival submissions of both the Advocates. With the assistance of respective Advocates, we have perused the detention order dated 12.4.2024. The detention order considers the criminal history of involvement of the petitioner in earlier offences and in recent offence i.e. Crime No.104/2024 punishable under Section 65(E) of the Maharashtra Prohibition Act which is under investigation.

11. The learned Advocate for the petitioner has submitted that the C.A. report is not received in Crime No.104/2024 which is considered while passing the detention order though the C.A. reports and the opinion of the Doctor is placed on record of earlier offences, which is of no use. As such, it has to be inferred that before passing the detention order the detaining authority was not conscious of the fact as to the absence of report from Forensic Science Laboratory in relation to the

petitioner's involvement in the offence of bootlegging which is considered for passing the detention order.

12. The detaining authority while considering the material as regards to the recently registered offence against the petitioner punishable under Section 65(E) of the Maharashtra Prohibition Act ought not to have formed basis for ordering the detention. The subjective satisfaction arrived at by the detaining authority for ordering the detention *sans* consideration of the issue of absence of report from the Forensic Science Laboratory.

13. 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."*

14. Drawing support from the judgment of the Hon'ble Apex Court in District Collector, Ananthapur (supra), it has to be held that the offence which is punishable under Section 65(E) of

the Maharashtra Prohibition Act could be effectively dealt with under the said Act and as such would not attract detention under the provisions of 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'.

15. 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.

16. Two statements which are considered for passing the detention order are of general nature. In both the confidential

statements when the witnesses tried to have a discussion, the petitioner abused and threatened them, these are the only allegations. From the statements of the witnesses it appears that they do not create the 'public order situation' and can be dealt with by the ordinary law.

17. Admittedly, in the case in hand the report of Chemical Analyzer relating to registration of the recent offence is neither available with the detaining authority nor brought before this Court. In this backdrop, the order of detention of the petitioner stands vitiated and is accordingly quashed and set aside.

18. For the aforesaid reasons, the writ petition stands allowed in terms of prayer clauses (A) and (B).

The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)