



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

CRIMINAL WRIT PETITION NO.605/2023

Sachin Shriram Meshram,
aged about 37 Yrs., Occ. Labourer,
R/o Sawalpur, Taluka Arvi,
District Wardha.

... Petitioner

- Versus -

1. State of Maharashtra,
through Additional Chief Secretary,
Advisory Board, Home Department,
2nd Floor, Mantralaya, Mumbai 440 032.
2. Collector and District Magistrate,
Wardha.
3. Sub Divisional Police Officer,
Wardha Division, District Wardha.
4. The Police Inspector
PSO of PS Arvi, District Wardha.

... Respondents

Mr. Parvez Mirza, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for the Respondents.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT : 18.1.2024.
DATE OF PRONOUNCING THE JUDGMENT : 1.2.2024.

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. By this petition the petitioner has challenged the detention order dated 17.5.2023 passed by respondent No.2 District Magistrate, Wardha and confirmation thereof vide order dated 7.7.2023 passed by respondent No.1 thereby the petitioner is ordered to be detained under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (for short "M.P.A.D. Act").

3. Respondent No.2 passed the order of detention against the petitioner in case No. Detention Order No.AK Home/Desk-2(B)WS/648/2023 after considering the grounds of detention and relying on the certain cases pending against the petitioner under Bombay Prohibition Act and relying on the in camera statements of two witnesses "A" and "B".

4. The order is passed under Section 3(2) of the said Act. The grounds of the detention set out that the criminal record of the detinue was reflective of his conduct of involving

himself in selling illicit liquor and thereby endangering human life and ruining poor families. The grounds of the detention reveal that the detainee was habitual in committing offences under Bombay Prohibition Act and he was engaged in bootlegging activities and the detainee was clamped as below record of Section 2 of the Act and said activities are referred to be prejudicial to the maintenance of public order.

5. The detaining authority referred to the past activities of the detainee in passing the detention order but had relied on the crime registered in last three years vide Crime Nos.979/2022 dated 25.10.2023, 782/2022 dated 24.8.2022, 760/2022 dated 16.8.2022 and 458/2022 dated 13.6.2021. Reliance was also placed on the two in camera statements which came to be recorded as no person was ready to complain against the detainee because of fear of retaliation and when certain residents of the area were taken into confidence and were assured that their names would not be disclosed two persons stood as witnesses and their statements got recorded.

6. Taking into consideration the bootlegging record and in camera statements, as the detainee was habitual in bootlegging activities which reflected in ascending trend and in order to prevent the detainee from indulging under the said activities and in order to curb the bootlegging activities the detaining authority was satisfied that it is necessary to detain the petitioner. The grounds on which detention order has been assailed are as follows:-

“(i) That, the impugned order does not explain or elaborate as to how the bootlegging activities of the petitioner would adversely affect public order. Any bootlegging activity which involves manufacture of illicit liquor could presumably affect public health but the same does not necessarily disturb public order; there is no presumption in fact or law that every incidence of disturbance of public health would necessarily disturb in public order.

(ii) Further, the confidential statements of the witnesses were not verified and not seen by the detaining authority. This fact would show that the statements were not verified for its genuinenesses nor the same was considered by the detaining authority and in either of these eventualities, the subjective satisfaction reached by the detaining authority would have to be deemed as perverse and, on this ground, also the impugned detention order is illegal.

(iii) That, there is a gap of 5 months between the detention order dated 17.05.2023 and the last crime registered against the present petitioner i.e. 13.12.2022. And, therefore, on account of the live link being snapped between the prejudicial activities of the petitioner/detenué and the detention order being clamped on him, the same is unsustainable as instead of being preventive, has become punitive.

(iv) That, there was a delay in deciding the representation made by the petitioner/detenué. The representation dated 27.05.2023 was sent through Central Jail, Wardha on 29.05.2023 and the Advisory Board passed its order on 07.07.2023. Thus, there is inordinate delay in considering the representation of the detenué. It is trite that, the authority is bound to consider the representation of the detenué as early as possible and expeditiously for the reason that personal liberty of a person is at stake and any delay would affect the fundamental right of a detenué as enshrined in the constitution to have its representation considered immediately.

7. The learned Counsel for the petitioner has relied on following judgments in support of his argument.

- i) Shaik Nazneen V/s. State of Telangana and others reported in (2023) 9 SCC 633,*
- ii) Syed Sabeena V/s. State of Telangana and others reported in 2022 SCC Online SC 2077,*
- iii) Hanif Karim Luluwale V/s. State of Maharashtra, through Additional Chief Secretary and others reported in 2022 SCC Online Bom 1367,*

- iv) Criminal Writ Petition No.736/2021 (Jaywanta S/o Gangaram Pawar V/s. The State of Maharashtra and others) decided on 30.6.2022,*
- v) Rakesh Mohan Gadekar V/s. State of Maharashtra and another reported in 2020(2) Mh.L.J. (Cri) 673,*
- vi) Criminal Writ Petition No.872/2021 (Sanjay S/o Soma Shinde V/s. State of Maharashtra and another),*
- vii) Elizabeth Ranibhai Prabhudas Gaikwad V/s. State of Maharashtra, Home Department (Special) and another reported in 2021 SCC Online Bom 206 and*
- viii) Sandeep Govind Pawar V/s. State of Maharashtra reported in AIR Online 2023 Bom 455.*

8. The learned A.P.P. has relied on the following judgments in support of his argument.

- i) Ramesh Balu Chavan V/s. The Commissioner of Police & Ors. reported in 2017 ALL MR (Cri) 3683,*
- ii) Kashinath Motiram Chavan V/s. The Commissioner of Police, Solapur & Ors. reported in 2021 ALL MR (Cri) 3034,*
- iii) Machindra Dnyanoba Jadhav V/s. The State of Maharashtra & Ors. reported in 2021 ALL MR (Cri) 3198,*
- iv) Kanuji S. Zala V/s. State of Gujrat and others reported in (1999) 4 SCC 514,*
- v) Mohammed Mustafa S/o Mohammad Mastan V/s. The State of Maharashtra & Anr. reported in 2018 ALL MR (Cri) 37,*
- vi) Pravin @ Bhayya Pratap Shinde V/s. Commissioner of Police reported in 2020 LawSuit (Bom) 50,*
- vii) Harish Patil V/s. The State of Maharashtra & Ors. reported in 2016 ALL MR (Cri) 5144,*

- viii) Bablu @ Pratik Hari Prakshale V/s. Shri Ranjit Kumar & Ors. reported in 2017 ALL MR (Cri) 3059,*
ix) Suresh @ Khiladi Yellappa Shivpure V/s. Commissioner of Police & Ors. reported in 2017 ALL MR I(Cri) 3289,
x) Sadashiv S/o Shriram Jadhav V/s. The State of Maharashtra & Anr. reported in 2021 ALL MR (Cri) 4192 and
xi) Anil Vitkar V/s. State of Maharashtra & Ors. reported in 2018 ALL MR (Cri) 4340.

9. The detaining authority has relied upon four crimes registered against the petitioner under the provisions of Maharashtra Prohibition Act and two statements of confidential witnesses “A” and “B”. So far as the crimes registered under the Maharashtra Prohibition Act are concerned, for these crimes the Investigating Officer did not think it fit to arrest the petitioner. If so many bootlegging crimes registered against the petitioner are excluded from the material available for the detaining authority to reach its subjective satisfaction, only two statements remains of two confidential witnesses. If we take a look at these statements we would find that nothing is mentioned therein to establish the live link with the object sought to be achieved by passing the detention order. It is further seen that it does not explain as to

how bootlegging activity *per se* itself would adversely affect the public order. In bootlegging activity in which the petitioner is involved is a manufacture of illicit liquor which can at the most be presumed to be adversely affecting the public health. There is no presumption in fact or law that every incidence of disturbance of public health would necessarily result in disturbance of public order.

10. This Court in Writ Petition No.736/2021 (Jaywanta S/o Gangaram Pawar V/s. The State of Maharashtra and others) decided on 30.6.2022 in paragraph Nos.9 and 10 has observed as follows:-

“9. It would be clear from the explanation given in clause (a) that the illegal activity of any of the persons referred to therein must ultimately result in harm, danger or alarm or feeling of insecurity among the general public or any section thereof or must lead to grave and widespread danger to life or public health or disturbance of any public safety and tranquillity or serenity or even tempo of day-to-day life. The keywords in the explanation which we must take note of are “illegal activity resulting in causing of harm, danger or alarm or feeling of insecurity among the general public or any Section thereof” or “causing of widespread danger to life or public health”. In other words, the disturbance must not be at individual or smaller level but must transcend to community level. Mere contravention of

law may not necessarily result in disturbance of public order though it may rather it does disturb order. This is clear from what is held in the case of Ashok Kumar vs. Delhi Administration & others: AIR 1982 SC 1143, when it was observed, “the true distinction between the areas of ‘public order’ and ‘law and order’ lies not in the nature or quality of the act, but in the degree and extent of its reach upon society.” This has been explained in different words by the Supreme Court in Ram Manohar Lohia (Dr) vs. State of Bihar and others : AIR 1966 SC 740, as follows :-

“...The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.”

Similar, proposition of law is laid down in Banka Sneha Sheela v. State of Telangana : (2021) 9 SCC 415, when it was observed in para 14, thus:-

“There can be no doubt that for “public order” to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects “law and order” but before it can be said to affect “public order”, it must affect the community or the public at large.”

11. These principles of law would impel the detaining authority thinking any bootlegging activity as providing sufficient ground to detain a person to think again and record its satisfaction

that the bootlegging activity indulged in by a person like the petitioner, has resulted or is likely to result in causing widespread disturbance among general public or such harm or danger, alarm or feeling of insecurity of such a nature that ordinary law and order measure would not suffice and a more telling; drastic and extraordinary devise of preventive detention is required.

12. Therefore, the authorities would be required to satisfy themselves as to how disturbance of public health in certain cases would also result in disturbance of public order. Such satisfaction has not been reached in the present case.

13. Confidential statements of the witnesses on the question of verification of in-camera statements would lead us to believe that in-camera statements are unreliable and need to be discarded for the reason that the statements are not verified. Though there is reference to the authority verifying the statements, discussion with the witnesses and the concerned Assistant Commissioner of Police and Deputy Commissioner of Police the statements reveal only endorsement that verification is

done but there is no endorsement that contents of the statements are verified by the detaining authority. The detaining authority has verified the statements stating that witnesses were unwilling out of fear of the detainee to depose against him. It is evident that the subjective satisfaction of the authority was arrived at without complying the verification as was required by law.

14. The learned Counsel for the petitioner argued that the order of detention needs to be quashed and set aside on various grounds with emphasis that there is a delay in passing the order of detention and the detaining authority has not acted promptly and vigilantly and, therefore, the live link between the activities of the detainee was snapped when the detention order was passed. Learned Counsel for the petitioner has made submission that the order is passed by detaining authority which requires to be approved within a period of 12 days by the State Government and thereafter a reference is to be made to the Advisory Board within 12 days. The State Government would require to make a reference to the Advisory Board within 12 days.

He has also submitted that the State Government would require to make a reference to the Advisory Board within a period of three weeks from the date of detention specifying its opinion as to whether there is sufficient cause for detention and on receipt of said report from Advisory Board the question whether to revoke the detention order or to confirm the same has to be decided.

15. Learned A.P.P. has stated that the detention order dated 17.5.2023 and all record papers submitted on 18.5.2023 for approval under Section 3(3) of the Act of 1981 are sent to the Secretary (Preventive Detention), Home Department (Special) Mantralaya, Mumbai and on 26.5.2023 the order of detaining authority got approval. The Advisory Board has given an opinion and reported within the stipulated period. Under such circumstances, submission made by the learned Counsel for the petitioner is not correct. It is submitted that the grievance of the petitioner that there is inordinate delay in deciding the said representation and in view of such delay detention of detenu

becomes illegal and the petitioner be released forthwith is not correct.

16. After going through the reply filed by the respondent No.2 and the reason given in reply in paragraphs 16 and 17 stating that there is no delay from the office of respondent No.2 and in any manner detenue's right is not prejudiced to make any effective representation and in any manner the same is not affecting any other right of the detenue.

17. It appears from the details given by respondent No.2 that the order dated 17.5.2023 was immediately submitted on 18.5.2023 for approval and the same was approved immediately. On 26.5.2023 the order was passed and the authority approved the order and it was communicated to the petitioner. It is within prescribed period as per Section 3(2), Sections 10 and 11 of the said Act.

18. One of the grounds is that there is no live link in the last criminal activity of the petitioner and the object sought to be

achieved by the preventive detention. There is a gap of 5 months between the detention order dated 17.5.2023 and the last crime registered against the petitioner i.e. 13.12.2022. The confidential statements are also recorded on 5.4.2023. There is delay of not less than 5 months in the present case which has not been explained in any manner by the detaining authority.

19. The delay so caused in the present case in our considered view, has the effect of snapping live link with the criminal activities of the petitioner and therefore, we are of the view that this aspect of the matter has vitiated the satisfaction reached by the Detaining Authority.

20. For the reasons stated above and based upon our conclusion recorded on the grounds enumerated hereinabove we proceed to pass the following order:-

- (i) The criminal writ petition is allowed.
- (ii) The impugned orders dated 17.5.2023 and 7.7.2023 are hereby quashed and set aside.

(iii) The respondents are directed to release the petitioner from detention unless required in any other case.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)