



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

CRIMINAL WRIT PETITION NO.642/2023

Shri Sonu @ Subodh S/o Babaraoji Lanjewar,
aged about 34 Yrs., Occ. Lobour,
R/o Karambhad, Tah. Parsheoni,
Dist. Nagpur.

... 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,
Nagpur, Dist. Nagpur.

... Respondents

Ms. Naziya S. Pathan, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT: 16.2.2024.

DATE OF PRONOUNCING THE JUDGMENT: 27.2.2024.

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

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

Heard finally by consent of learned counsel for the parties.

2. The challenge in this petition is to the impugned detention order dated 18.8.2023 and confirmation order dated 19.9.2023 passed in terms of Section 3(1) 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.D.A. Act”).

3. The learned Counsel for the petitioner would submit that though the petitioner has raised several grounds for challenging the detention order, however, the two cases which the detaining authority has taken into consideration were the cases under the Maharashtra Prohibition Act, 1949 and in these two cases the Police Authorities did not even deem it necessary to arrest the petitioner. The notice under Section 41A(1) Code of Criminal Procedure was issued. He, therefore, submits that after one or two months there was hardly any question of detaining authority being satisfied that the petitioner could be preventively detained under the provisions of said Act. Even otherwise the

grounds of detention order points out routine law and order situation for which the drastic power of preventive detention could not have been exercised. Therefore, the learned Counsel for the petitioner would submit that the impugned detention order warrants interference.

4. The learned A.P.P. points out that the cumulative effect of two cases has been taken into consideration by the detaining authority. He submits that detaining authority in addition has referred to two in camera statements which suggests that witnesses are not coming forward to depose against the petitioner. He, therefore, submits that there is no illegality in the impugned detention order and the petition may be dismissed.

5. We have considered the contentions of both sides and also perused the material on record.

6. It is seen that detaining authority has relied upon two crimes registered against the petitioner under different provisions of Maharashtra Prohibition Act, 1949 and also two statements of confidential witnesses. So far as the crimes registered under the

Maharashtra Prohibition Act, 1949 are concerned, the only ground is that the petitioner was habitual bootlegger. For these two crimes Investigating Officer did not even think it necessary to arrest the petitioner. Arrest in these crimes, which are cognizable in nature, could have been done by the Investigating Officer by recording requisite satisfaction under Section 41(1)(a) of the Code of Criminal Procedure which lays down that the Police Officer may without an order arrest any person if he is satisfied that such arrest is necessary. Such being the nature of power of Investigating Officer, which was not exercised in the present case, it cannot be said that the registration of two bootlegging crimes against the petitioner provided any reasonable material for detaining authority to arrive at its subjective satisfaction.

7. Two cases in which on receiving information the raid was conducted and the Constable who has conducted the raid has lodged the complaints against the petitioner and the crimes are registered. If these two crimes registered against the petitioner are excluded from the material available against the petitioner, for the detaining authority to reach its subjective satisfaction what

would remain is only two confidential statements of witnesses. If we look at these statements we would find that it is very difficult to find that the incident mentioned therein had any live link with the object sought to be achieved by passing the impugned detention order.

8. In both the confidential statements witnesses have stated that they were passing through the road near the liquor shop of the petitioner, the petitioner abused the family in filthy language and manhandled the witnesses and their families. These are the complaints clearly against the individual because they were afraid of the petitioner. As both statements are against the individual it would not constitute any relevant material for the purpose of the present case.

9. Such being the nature of both the statements we do not think that these could have been considered as constituting any relevant material for reaching subjective satisfaction by the detaining authority.

10. The circumstances that the Police Authorities did not even deem it necessary to arrest the petitioner in two crimes

which are now relied upon to make the detaining order does not appear to have been put up before the detaining authority by the sponsoring authority. Assuming that this was indeed placed before the detaining authority we are satisfied that the detaining authority has not applied its mind to this vital aspect. Neither impugned order nor the confirmation order reflect any material on this vital aspect. Thus according to us this clearly amounts to non-application of mind and is sufficient to vitiate the impugned detention order.

11. On perusal of detention order and the reply filed by respondent No.2 it reveals that all the documents were not provided to the petitioner and it was informed that if required the said documents, then he can apply before the authority. This is also one of the grounds which vitiates the detention order. There are other grounds raised by the learned Counsel for the petitioner in support of claim of the petitioner, however, as we are satisfied that the impugned detention order is vulnerable for the aforesaid reasons we do not think it necessary to address other grounds that have been raised.

12. For the aforesaid reasons we set aside the impugned detention order and direct that the petitioner be released forthwith unless his detention is necessary in any other crime.

Rule is made absolute in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)