



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

CRIMINAL WRIT PETITION NO.733/2024

Sawan Sunil Deshpande,
Bhandara, Maharashtra 442 301.

... Petitioner

- Versus -

1. The District Magistrate,
Bhandara.
2. The State of Maharashtra,
through Addl. Chief Secretary to
Government of Maharashtra,
Home Department, Mantralaya,
Mumbai.
3. The Superintendent,
Bhandara District Prison.

... Respondents

Mr. R. A. Jaiswal, Advocate for the petitioner.
Ms. M.H. Deshmukh, A.P.P. for respondent Nos.1 to 3/State.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 17.12.2024.

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

Rule. Rule made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

2. The petitioner came to be detained vide order dated 1.6.2024 passed by the District Magistrate, Yavatmal in exercise of powers under the provisions 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”).

3. The challenge to the detention order is on the following grounds that solitary crime is considered wherein the C.A. report is not available, there is a delay in passing the detention order from the date of crime, the statements which were provided along with the grounds and the gist mentioned in the grounds are totally different and the statements are not verified by the detaining authority.

4. The learned Advocate for the petitioner would argue that in the crime, which is relied on in the detention order, the report from the Forensic Science Laboratory is not made available. As such, the order of detention suffers from non-application of

mind. According to him, in absence of material to infer that the conduct of the petitioner in the aforesaid registered offences cannot be construed to be violating 'public order', the detention order cannot be passed. Hence the detention order is illegal. Therefore, it is prayed to allow the writ petition.

5. While countering the submissions made by the petitioner, the learned A.P.P. has submitted that there is no delay in lodging the F.I.R and the C.A. reports in other earlier crimes were made available to the detaining authority. Crime No.37/2024 dated 22.2.2024 and Crime No.243/2023 dated 23.10.2023 punishable under Section 65 of the Maharashtra Prohibition Act were registered at Adyal Police Station and the statements of secret witnesses were recorded on 5.3.2024, these facts would reveal the bootlegging activities of the detenu. As such, the order passed by the respondent is just, proper and legal which is issued considering all the material against the detenu as well as by giving an opportunity to the petitioner by supplying all the documents. Hence, he has prayed to dismiss the writ petition.

6. The contention of the petitioner is that the representation made by the petitioner is not considered and communicated to the petitioner by the authority. The respondents have stated that as the representation is not received by the authority within a stipulated period, the right to prefer a representation to the detaining authority stands terminated and the same was communicated to the petitioner on 10.6.2024.

7. Heard learned Advocate for the petitioner and the learned A.P.P. With the assistance of them, we have perused the detention order dated 1.6.2024 which has considered the criminal history of the petitioner of involvement in offences since 2023 punishable under the provisions of the Maharashtra Prohibition Act. As far as the offence committed on 22.2.2024 i.e. Crime No.37/2024 is concerned, there is no subjective satisfaction arrived at by the detaining authority as the report of Forensic Science Laboratory is not received or made available, the said fact is not in dispute. 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.

8. Though the ground of non-consideration of representation is taken by the petitioner, in view of the approval granted by the Government under Section 33 of the M.P.D.A. Act dated 10.6.2024 the right to prefer a representation against the detention order to the detaining authority stands terminated. Therefore, there is no substance in this ground raised by the petitioner.

9. The offence which is considered by the detaining authority is dated 22.2.2024 and the detention order is passed on 1.6.2024. There is a delay of more than four months. In reply, the respondents have stated in detail how the proposal travelled from one authority to other and it took time as the earlier proposal was forwarded on 3.4.2024, however, the documents regarding disturbance of 'public peace' and the report of C.A. were not made available and hence, it was sent back on

29.4.2024. Later on after compliance, the police department has submitted the said proposal again on 17.5.2024. After receipt of the same, the authority has passed the detention order on 1.6.2024. The reason is given that they were not in receipt of documents about disturbance of public peace and C.A. report. The C.A. report for the crime which is considered while passing the detention order is not produced on record before this Court which is not even considered by the authority. How the public order is disturbed and which document is filed by the authority is also not mentioned. Therefore, the delay is not satisfactorily explained by the respondents.

10. On perusal of the statements, which are provided to the detenu and the gist in the grounds of detention, it is seen that they are totally different. The original confidential statements are not produced before the Court also. Therefore, it creates a doubt about recording of statements and the subjective satisfaction arrived at by the detaining authority. No doubt, detention order can be passed based on solitary crime but in this case, the notice

under Section 41(1) of the Code of Criminal Procedure was also not issued to the detenu and the statements are also not reliable.

11. In absence of C.A. report there is no subjective satisfaction arrived at by the detaining authority. In this regard, we would like to rely on the judgment of the Hon'ble Apex Court in the case of District Collector, Ananthapur V/s. V. Laxmanna reported in **2005 DGLS (SC) 274** wherein in paras 7 and 8 the following observations are made:-

“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.”

12. As per the guidelines 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'.

13. In view of the aforesaid observations, the order of detention of the petitioner stands vitiated and is accordingly quashed and set aside.

14. The petition stands allowed in terms of prayer clauses (a) and (b).

The petitioner be released forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)