



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

CRIMINAL WRIT PETITION NO.130 OF 2024

Armansingh S/o Mansingh Tak, Aged about 33
years, Occ: Agriculturist, R/o Banorchandr, Tah.
Narkhed, Distt. Nagpur.

Petitioner

-Versus-

1. The District Magistrate, Nagpur having its
office at Office of the Collector & District
Magistrate, Nagpur, Tq. & Distt. Nagpur.
2. The State of Maharashtra, Through its Police
Station Officer, Police Station Jalalkheda, Dist.
Nagpur

Respondents

Shri T.S.Deshpande Advocate a/w Shri Alpesh Deshmukh Adv. for Petitioner.
Shri S.S. Doifode, APP for Respondent Nos.-1 & 2.

**CORAM : VIBHA KANKANWADI AND
MRS.VRUSHALI V. JOSHI, JJ.**

Date of Reserving the judgment:- 26/06/2024

Date of Pronouncing the judgment:-22/07/2024

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

Rule. Rule made returnable forthwith. The Criminal Writ
Petition is heard finally with the consent of the learned counsel for the
parties.

2. This petition takes exception to the order of detention and
committal, dated 09.12.2023, passed against the petitioner by the

respondent No.1 under Sections 3(1) and (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 (hereinafter referred to as the MPDA, Act, 1981).

3. The facts in brief are as under:

A proposal was initiated to detain the petitioner by invoking the provisions contained in Section 3(2) of the MPDA, Act, alleging, *inter-alia*, that he is a habitual seller of illegal distilled liquor and had committed various offences in contravention of provisions of Maharashtra Prohibition Act, 1949, in the areas falling within the jurisdiction of Jalalkheda, Police Station, Dist. Nagpur Rural. A total of 7 cases were registered thereunder from 13 August 2021 to 23 June 2023. Investigation revealed that, the liquor den of the petitioner was always crowded with customers, who came to consume liquor, keeping the road crowded and behave rudely, so the passers-by suffer from undeserved harassment. The Chemical Analyzer reported that the samples collected during the course of raid did not contain poisonous alcohol like methyl alcohol in the alleged liquor.

4. Shri Deshpande, Learned counsel for the petitioner submitted and supplied emphasis on the following grounds:

The Police Station themselves did not seek custody of the petitioner by arresting him in crime bearing FIR no.225/2023 and merely issued intimation under 41-A of the Cr.P.C. Thus, the detaining authority has straight away resorted to the action of preventive detention. The perusal of the in-camera statements would reveal that the same are vague ambiguous and imprecise. There is no mention with regard to the date on which the so-called threats were given to the witnesses. In absence of the necessary particulars, it is difficult to find out any live-link with the purpose of detention.

5. The learned counsel for the petitioner has relied on the following judgments of this Court in support of his argument:-

(i) Criminal Writ Petition No.738 of 2022 (Ashokrao Uttamrao Pawar .Vs. State of Maharashtra and ors. Decided on 08.02.2023

(ii) Criminal Writ Petition No. 78 of 2022 (Chattu Ramjan Naurangabadi Vs. The State of Maharashtra and or. Decided on 11.07.2022

(iii) Criminal Writ Petition No.104 of 2024 (Rama Devchand Kumbhalkr Vs. The State of Maharashtra and ors. Decided on 26.04.2024.

6. Shri Doifode, Learned APP, submits that in this instance, the petitioner has repeatedly committed offences and it has also not been able to deter him twice by the police machinery under Section 93 of the Maharashtra Prohibition Act, 1949. He further submits that, the petitioner has failed to consider the latest Amendments, made in year 2008, 2013 and 2018, regarding the service of notice under section 41-A of Cr.P.C. as stated by the Hon'ble Apex Court **Arnesh Kumar vs. State of Bihar, 2014, and Satyendra Kumar Antil vs. CBI and others** *SLP Cri. No. 5191 of (2021) 10 SCC 773.*) Shri Doifode, learned APP contends that, complying with the Article 22(6) of the Constitution, in order to procure advance protection to the probable brutality of the petitioner, alleged particulars which may disclose identity of the in-camera witness are concealed.

7. Learned APP has relied upon the following judgments in support of his argument :-

- (i) Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad, reported in 2024 ALL MR(Cri.) 680
- (ii) Ramesh Balu Chavan Vs. The Commissioner of Police and ors. reported in 2017 ALL MR (Cri.) 3683
- (iii) Kashinath Motiram Chavan Vs. The Commissioner of Police, Solapur and ors. reported in 2021 ALL MR (Cri.) 3043.

(iv) Machindra Dnyanoba Jadhav Vs. The State of Maharashtra and ors. reported in 2021 ALL MR (Cri.) 3198.

(v) Kanuji S.Zala Vs. State of Gujarat and ors reported in (1999) 4 SCC 514.

(vi) Mohammad Mustafa Mohammad Mastan Vs. The State of Maharashtra and anr reported in 2018 ALL MR (Cri.) 37.

8. Heard learned counsel for both the parties.

9. The detaining authority has relied on Crime No.225 of 2023 dated 23.06.2023 and two statements, while considering the petitioner as bootlegger and the background of the petitioner is mentioned by the detaining authority but on perusal of the earlier crimes mentioned in the grounds of detention order, it appears that all are registered of under Section 65(e) of the Maharashtra Prohibition Act, 1949.

10. The Detaining authority has relied on the Crime No.225 of 2023 dated 23.06.2023 for the offence under Section 65(e) of the Maharashtra Prohibition Act. The patrolling party received the confidential information about the stock of Mohwa Flower liquor and illegal liquor selling is going on at residence of the Petitioner hence, they conducted raid and seized total 40 litres of Mohwa Liquor, worth Rs. 8000/- which was inside the house of the petitioner. The police took 180 ml sample quantity for the purpose of Chemical Analysis examination.

11. The petitioner has stated that though he was there on the spot at the time of raid he was not arrested and the notice under Section 41-A of the Code of Criminal Procedure was issued taking recourse to provisions of sub section (3) of 41-A of the Code of Criminal Procedure, the detaining authority has straight away resorted to the action of preventively detaining a person which has created contradiction in the action of Law Enforcement Authority.

12. Learned AGP has replied to this point stating that nowhere in the M.P.D.A. Act is stated that arrest is pre-requisite before the invocation of M.P.D.A Act. As per the amendment in Criminal Procedure Code in the year 2008, 2013 and 2018 and the verdict of the Hon'ble Supreme Court, particularly in case of **Arnesh Kumar Vs. State of Bihar, 2014** and **Satyendra Kumar Antil Vs. CBI and ors. SLP Cri. No.5191 of (2021) 10 SCC 773**, it is held by the Hon'ble Apex Court that in cases below 7 years of punishment the prescribed procedure for arrest is to be followed.

13. As per Section 41-A of the Code of Criminal Procedure mandatorily provides that a person must be served with notice, by the Police prior to his arrest for offence punishable with imprisonment for less than 7 years and section specifies the procedure to be followed

before a person can be deprived of his liberty. Section 41-A further provides in sub-Section (2) where such notice is issued to any person, it shall be the duty of the person to comply with the terms of the Notice.

14. Section 41(A) (3) further provides that, where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for the reasons to be recorded. The Police Officer is of the opinion that he ought to be arrested.

15. Section 41-A (4) provides that where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the Police Officer may subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

16. The crime is registered against the petitioner for the offence under Section 65(e) of the Maharashtra Prohibition Act, which is punishable for three years. Instead of taking recourse to provision contained in sub-section 3 of Section 41-A of the Code of Criminal Procedure, the detaining authority has straight way resorted to the action of preventively detaining a person which has created a contradiction in the action of Law Enforcement Authority. One action of Law

Enforcement Authority indicates that petitioner is not such a dangerous person as would warrant his arrest in bootlegging crimes, while other authority feels that petitioner is such a dreaded criminal that his activities are detrimental to public order unless he is sent behind the bar. These observations are made by the Co-ordinate Bench of this Court in Writ Petition No. 781 of 2022 and also relied on the judgment of **Hanif Karim Laluwale Vs. State of Maharashtra and others in Criminal Writ Petition No. 75 of 2022 decided on 28.06.2022.**

17. The respondent in his reply stated that though twice preventive action was taken against the petitioner under Section 93 of the Maharashtra Prohibition Act, 1949 on 19.03.2019 and 16.03.2022 but in spite of receipt of notice, the petitioner did not deliberately remain present in both the said proceedings, hence bond could not be executed and remedies available under relevant law failed to deter the petitioner. It shows that the remedy which was available as per the provisions of law are not taken by the police under the provisions of Maharashtra Prohibition Act before taking action under Section 3 of the M.P.D.A. Act.

18. The detaining authority has relied on the two statements. Both these statements are stereo type. In both these statements, witnesses

have stated that due to his country liquor business as people consume liquor and create chaos, abuses do teasing and caused harm to the children, he asked the petitioner to stop his business on saying so he abused him in filthy language and gave threats and beat him and took Rs.1000/-. Similar statement of witness B is recorded. From the statements, it does not reveal that it affect the public peace.

19. The samples of the seized articles were sent for Chemical Analysis. The report of Chemical Analysis shows that “the sample contains 16.42 % V/v of Ethyl alcohol in water. It is not a medicinal antiseptic/toilet preparation for a flavouring material”. The opinion of the medicine and Toxicology Government Medical College Nagpur was obtained and the Assistant Professor Department of Foreign-sic medicine has opined that “the alleged liquor does not contain any poisonous form of Alcohol like methyl alcohol any preparation containing ethyl alcohol in concentration mentioned in the letter when consumed excessively is injurious to health and likely to cause death”. It clearly shows that it depend on consumption of quantity of liquor. Hence the opinion is also in favour of the petitioner as no poisonous form of alcohol is found.

20. For this reason also, the impugned order suffers from the vice of non consideration of relevant material. We, thus, find the substance in the present Writ Petition.

21. In the result, we find that this Writ Petition deserves to be allowed and it is allowed in terms of prayer clause (a).

22. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VIBHA KANKANWADI, J.)