



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

CRIMINAL WRIT PETITION NO. 257 OF 2024

Ashok S/o. Panjuma Chelani,
Age : 43 Yrs. Occ.: Business,
R/o. Block No.206, Near Sai Chanduram
Darbar, Jaripatka, Nagpur,
Tah. & Dist. Nagpur.

... PETITIONER

...VERSUS...

1. The State of Maharashtra,
Through Additional Chief Secretary,
Home Department (Special),
Add.: IInd Floor, Mantralaya, Madam Cama
Road, Hutatma Rajguru Chowk,
Mumbai – 400 032.
2. The Commissioner of Police, Nagpur City,
Civil Lines, Nagpur.
3. Crime Branch Unit 5 (Detection),
Through its Police Inspector, Nagpur.

... RESPONDENTS

Mr. Gaurav Gour, Advocate for Petitioner.
Mr. S. S. Doifode, APP for Respondents/State.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 03.10.2024
JUDGMENT PRONOUNCED ON : 16.10.2024

JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of
learned counsel appearing for the parties.

2. By way of this petition, the petitioner is challenging the order of detention issued by respondent No.2- Commissioner of Police, Nagpur, on 29.12.2023, in exercise of his powers under Section 3(2) 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 (the MPDA Act, 1981).

3. The petitioner has raised several grounds in the Writ Petition. The said grounds consist of, communication of grounds to the petitioner in jail by taking signature on a back dated acknowledgment, non-appreciation of the in-camera statements and the nature of criminal activities attributed to the petitioner.

4. Mr. Gour, the learned Counsel for the petitioner has contended that the detaining authority has relied on Crime No.490/2023, registered at Police Station, Kapil Nagar, Nagpur, on 04.11.2023, for the offence punishable under Sections 65(e) and 83 of the Maharashtra Prohibition Act, 1949. The petitioner was arrested on 24.12.2023 and has been granted bail on 28.12.2023.

5. According to the learned Counsel for the petitioner, the detaining authority did not make any observations on its own to the contents of the

confidential statements. He further submitted that, there is no any record to show that unrest was created by the petitioner atleast after the last amongst all the material incidents, which is said to have occurred on 04.11.2023. Neither the offence and the two in-camera statements of the witnesses which have been taken into account jeopardize the public order.

6. The detaining authority has filed affidavit of Dr. Ravinder Kumar Singal, Commissioner of Police, Nagpur, which is sworn on 30.04.2024. The respondent No.2 has stated in his affidavit that, the in-camera statements of the witness "A" and "B" were recorded on 27.11.2023 and 02.12.2023 respectively. The major submission of the Learned A.P.P. is that, on going through the material noted in the detention order, it discloses that each time the quantity of liquor/alcohol seized was of a lofty amount in lakhs and thousands, foreign liquor in nature. Moreover, it was smuggled at cheap prices from places where easily available such as Delhi and Haryana and sold illegally at the bars and shops in the city of Nagpur and among other districts including Wardha, Chandrapur, Bhandara and so on.

7. The statements of the witnesses reveal that the petitioner is of a bully nature, always abuse in filthy language and threaten to kill people. The petitioner initiates fights in the locality in the presence of alcohol as well, which has created disturbance in and out in the daily lives of people resulting into the hamper of public peace and causing regular conflicts.

8. The petitioner is detained as a bootlegger. Though there are many crimes registered against the petitioner, the one crime is considered which was within six months prior to passing the detention order. The offence under the Crime No.490/2023 is registered against the petitioner on 04.11.2023 for the offence punishable under Section 65(e) read with Section 83 of the Maharashtra Prohibition Act, 1949. On 03.11.2023, the information was received by the police about illegal transportation and keeping stock of foreign liquor, therefore, the raid was conducted and the person named Atul Vijay Bhaladhare was found in a possession of liquor. He told the police that he used to transport said illegal liquor to many Bars and Shops and the owner of the said stock of liquor is Ashok Panjumar Chelani i.e. the petitioner. He has given all the details how the transportation of the foreign liquor is done by the petitioner. The notice was issued to the said person and on his information and the statement of other person, the notice was issued to the petitioner under Section 41(a) of the Code of Criminal Procedure, 1973. When said Atul Bhaladhare appeared before the police, he was arrested on 05.11.2023. Though the notice was issued and he was found in fault, the petitioner has not appeared before the police and has applied for the anticipatory bail, which was rejected. Thereafter, the petitioner surrendered before the Magistrate Court and he was arrested and was in magisterial custody and released on regular bail. The conditions of bail order and how he was arrested is considered while passing the detention order.

9. The learned Counsel for the petitioner has stated that though the statements of the confidential witnesses were recorded on 27.11.2023 and 02.12.2023, were not placed before the Magistrate while passing the bail order. The petitioner has relied on the judgment of the Hon'ble Apex Court in the case of ***Nenavath Bujji etc. Vs. State of Telangana and Others*** [2023 ***SCC Online 367***], wherein the Hon'ble Apex Court has given guidelines in paragraph No.43 as under :

“43. We summarize our conclusions as under :-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,*
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,*
- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,*
- (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,*
- (v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,*

- (vi) *The satisfaction cannot be inferred by mere statement in the order that “it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order”. Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,*
- (vii) *Inability on the part of the state’s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,*
- (viii) *Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s)/grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and*
- (ix) *To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”*

10. In view of the above said guidelines, the subjective satisfaction of the detaining authority is necessary. It is also necessary to consider whether there is the situation of public order or it can be controlled by ordinary law.

The crime, which is considered is of bootlegging. The applicant has illegally stored the foreign liquor at different places and he used to transport it. Through the contents of the First Information Report, it does not appear that it creates any public order. The action under Section 65(e) and 83 of the Maharashtra Prohibition Act, 1949 is already taken.

11. The two statements are considered by the detaining authority. The statement of 27.11.2023 is of the person, who was driving the truck owned by the petitioner. The petitioner suspected that he had given the information about the godown of his stock of liquor and, therefore, somebody has conducted Reiki and, therefore, the petitioner beat him, abused him and asked him to sign the form of transfer of vehicle in his name to save himself from creating any nuisance by the witnesses. The petitioner told him that he will transfer the truck in the name of the witness then, he will be arrested along with the petitioner and there will not be danger to the petitioner from the witness. On perusal of original statement, the Assistant Police Inspector has recorded the statement. Though the statement was recorded by Assistant Police Inspector, it was verified by the Assistant Commissioner of Police and on perusal of the verification, he has stated that on 09.12.2023, he called the witness to verify the statement of the witness, but the witness did not appear before him as he was scared and, therefore, it was confirmed by him that whatever the witness has stated in his statement, is correct. Such type of verification cannot be relied

upon. The Commissioner of Police has also stated that he has discussed the matter to Assistant Commissioner of Police and he is satisfied. When Assistant Commissioner of Police himself has not verified the statement properly, said statement cannot be considered for passing the detention order. Another statement of the confidential witness "B", the same procedure is followed. The said witness was also not present before the Assistant Commissioner of Police or it was not verified by the Assistant Police Inspector, in whose presence the statement was recorded, therefore, both the statements are of no use to pass the detention order.

12. The crime which is considered is not sufficient to come to the conclusion that it creates a situation of public order and the statements which are not verified by the authorities and only formality is done of recording the statements, the order is vitiated. Hence, it requires to quash and set aside the detention order.

13. In the result, the petition is allowed.

We hereby quash and set aside the order dated 29.12.2023 passed by respondent No.2 and direct the detenue to be set at liberty forthwith, unless his detention is required in some other crime.

14. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)