



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

CRIMINAL WRIT PETITION NO.317 OF 2024

Mrs. Naina Ganesh Bhange, Age 23, Occupation
Housewife (Wife of the Detenue Ganesh Arun
Bhange) Near Maroti Mandir, Dangari Ward
Hinganghat, Wardha. Maharashtra, 442301 **Petitioner**

-Versus-

1. The District Magistrate, Wardha
2. The State of Maharashtra, Through Addl. Chief
Secretary to Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent, Nagpur Central Prison, **Respondents**
Nagpur.

Ms. Jayashree Tripathi Adv. h/f Shri. R.R. Vyas, Advocate
for Petitioner.
Shri S.S. Doifode, APP for Respondent Nos.-1 to 3.

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

**Date of Reserving the judgment:- 02/07/2024
Date of Pronouncing the judgment:- 24/07/2024**

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

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

2) The petitioner, who is the wife of the detenue Ganesh Arun Bhangе has preferred this petition questioning the preventive detention order passed against him on 06.02.2024 bearing No. A.K. Home/Desk - 2(B) WS /201 /2024 by respondent No. 1 in exercise of the powers 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 (hereinafter referred to as the MPDA, Act, 1981) and confirmed by respondent No.2 on 19.03.2024.

3) The offences in C.R. No. 0036/2024 dated 09.01.2024, C.R. No. 1527/2023 dated 04.12.2023, C.R. No. 1234/2023 dated 17.10.2023, along with two in-camera statements of witness “A” and “B” are taken into consideration by detaining authority to arrive at his subjective satisfaction.

4) It is stated in the detention order that, offences of last six months have been taken into consideration. Out of 20 criminal activities from 2019-2024, seventeen offences registered against the detenue are taken into account while passing the detention order. The in-camera statement of witness “B” states that, a few years ago, the detenue had

beaten the lady President of Darubandi Mahila Mandal, not only molested her but also attacked her by knife with an attempt to kill her.

5) On perusal of the material available on record, it mentions that, the detenue is engaged in illegal possession and storage and selling of liquor in contravention of the provisions of Maharashtra Prohibition Act, 1949.

6) Learned Counsel appearing for the petitioner, submits that, the detaining authority has considered stale offences of the year 2020, 2021, 2022, thereby has considered extraneous material. She further states that, one of the incidents considered by the detaining authority at para 8.1 is C.R. No. 0036/2024 u/s. 324, 504, 34 IPC dated 09.01.2024, for said offence, he can be punished under Indian Penal Code and it is not related to any bootlegging activity. Learned counsel appearing for the petitioner further contends, it is pertinent to note that, there is no Chemical Analyzer's report/opinion of any expert or medical/research hospital certifying that the sized liquor is injurious to human health, the material is also not placed before the detaining authority nor the copy is furnished to the detenue.

7) Learned APP, Shri. S.S. Doifode, submits reply to the arguments of petitioner that, offences mentioned in para 8.3 to 8.20 are

offences, which show the continuance of indulgence of the detenue in the Bootlegging activities. The Hon'ble Supreme Court as held in **"The Collector & District Magistrate W.G. Dist, Eluru, Andhra Pradesh V. Sangala Kondamma, 2005 3 SCC 666 (@ para 10) ("Sangala Kondamma")** has observed that :-

" If the grounds form a chain of proximate events and if the last incident is proximate to the date of detention, such a detention order cannot be set aside on the ground of being stale even if earlier incidents are not proximate to date of detention".

8) The word "proximity" does not mean any immediate closeness but it rather means something which indicates a pattern observed by the Hon'ble Court in **Bhupendra vs. State of Maharashtra & Anr., (2008) 17 SCC 165, @ para 10.**

9) He further submits that, the C.A. reports which were annexed with the proposal were provided to the detenue along with the grounds of detention. The same is also mentioned that, it was hazardous, badly affected the life of people and also negatively affects metabolism. Therefore, the same is dangerous to public health. The petitioner has not made any explanation in the offences mentioned in grounds in para no. 8.4 and 8.20 in which the C.A, reports were received and shows high level of Ethyl Alcohol in the sample of seized liquor from the possession

of detainee. It is further submitted by the Learned APP, that the receipt of C.A. Report takes time and therefore for avoiding delay, the proposal was sent by Police Inspector, Police Station, Hinganghat, on 18.12.2023 to the committee and the last two offences were on 17.10.2023 and 04.12.2023 and for avoiding delay on the basis of the crime registered against the detainee.

10) Heard the learned counsel appearing for the petitioner and the learned APP appearing for the State.

11) The detainee sent the representation to Superintendent of Nagpur Central Prison for sending it to State Government for its consideration, revoke and communication. The detainee has not received the communication till the date of filing of the petition. The respondent No.2, Superintendent of Prison has not filed reply and respondent No.1- the State Government has stated that the respondent No.1 is not directly connected with the said ground and hence, no reply is filed for non communication of the decision on representation. The detainee has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a Constitutional Mandate commanding the concerned authority to whom the detainee forwards his representation questioning the correctness of

the detention order planned upon by him and requesting for his release or to consider the said representation within a reasonable dispatch and to dispose of the same as expeditiously as possible. The Hon'ble Apex Court in **Rama Borde K. Saraf Vs. Commissioner of Police** reported in **1989 (3) SCC 173** has observed that this Constitutional requirement must be satisfied with respect, but if this Constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal. Such a breach would defeat the very concept of liberty highly cherished right, which is enriched under Article 21 of the Constitution.

12) It is further observed by Apex Court in **Rama Borde K. Saraf Vs. Commissioner of Police** (supra) in paragraph No.20 that :-

"20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22 (5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances or' each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so

unsatisfactory, such delay could vitiate the order of detention”.

13) Except in report of Advisory Board, there is nothing on record about the receipt of representation. There is no communication of his representation. The Advisory Board has mentioned in report that his representation is considered and opportunity is given to him. They heard him on V.C. In the reply filed by the respondent No.1, there is no explanation as to why it was not communicated to detainee.

14) We hold that the representation was dealt with in routine manner and there was no application of mind by the competent officer as to whether it was necessary to call for comments to the sponsoring authority. It is well settled that the right of a person, who is preventively detained to make a representation and have it considered by the authority concerned as expeditiously as possible is a Constitutional right under article 22 sub-clause (5). Any un-reasonable and unexplained delay in considering the representation is held to be fatal to the continued detention of the detainee. The petitioner has relied on the judgment of Apex Court.

(i) S.Amutha V. The Government of Tamil Nadu and ors. 2022, Live Law (SC),25

(ii) Rama Dhondu Borade Vs. V.K.Saraf and ors. (1989) 3 SCC 173

- (iii) Mahesh Kumar Chauhan @ Banti Vs. Union of India and ors. (1990) 3 SCC 148
- (iv) Rashid Kapdia Vs. Medha Gadgil and anr. (2012) 11 SCC 745,
- (v) Rajammal V. State of Tamil Nadu 1999 (1) LJ (SC) 265
- (vi) Harish Pahwa Vs. State of U.P. and ors. (1981) 2 SCC 710
- (vii) Nirmala Sawant (mother of Detenue) V. Commissioner of Police Pune Cri. W.P. No.3362 of 2022 D.O.17.01.2023.
- (viii) Prakash Chandra Yadav Vs. State of Jharkhand and ors. 2023 Live Law (SC) 529
- (ix) Ranbir Singh Vs. T. George Joseph, District Magistrate Meerut and anr. 1990 SCC (Cri.) 613

15) In support of the argument, the detenue has relied on the aforesaid judgments. We have gone through the said judgments. There is substance in the argument of the detenue. Since, there is no explanation why the decision on the representation is not communicated, the Constitutional right under article 22 (5) of the Constitution of India stands affected.

16) Next ground of the petitioner is that the extraneous material is considered while passing the order of bootlegging. The detaining authority has stated that the detention order is based on last six months

offences registered against the detainee. Considering the Crime Nos.36 of 2024, dated 09.01.2024, Crime No.1527 of 2023 dated 04.12.2023, Crime No.1234 of 2023 dated 17.10.2023, the authority has stated that seventeen offences registered against the detainee in the last five years are taken into consideration during passing of the detention order. It is mentioned in 8.3. para of the grounds which were communicated to the detainee. The subjective satisfaction of the detaining authority is therefore not cleared as the authority has considered extraneous material which are old and steal of year 2020, 2021, 2022, while passing the present detention order. The respondent has stated that to show continuous indulgent in bootlegging activities authority has considered earlier offences.

17) Learned APP has relied on the judgment of the Hon'ble Apex Court. *The Collector and District Magistrate W.G. District Eluru, Andhra Pradesh V. Sangala Kondamma, 2005 3 SCC 666 @ para 10 .*

It is observed that if the grounds from a chain of proximate events and if the last incident is proximate to the date of detention, such a detention order cannot be set aside on the ground of being stale even if earlier incidents are not proximate to the detention. The word 'Proximity' does not mean any immediate closeness but is rather means something which indicates a pattern observed by the Hon'ble Court in *Bhupendra V.*

State of Maharashtra and anr. (2008) 17 SCC 165 @, para 10.”

18) The Hon’ble Apex Court observed in **Khaja Bilal Ahmed Vs. State of Telangana V. State of Telangana** reported in 2020(13) SCC 632 in para No.(23) as under:-

“If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future”.

19) In view of the observations made by the Hon'ble Apex Court, in the case in hand, the authority has considered extraneous material, which shows no application of mind.

20) The detaining authority relied on two crimes designating the detainee as bootlegger offences under Section 65(e) and 77A of Maharashtra Prohibition Act . The CA reports are not received by the authority in both the crimes. Without CA report and opinion, the detainee has declared as bootlegger. It is not placed before the authority or not supplied to detainee which is violative of detainee's rights guaranteed under article 22 of sub-clause 5 of the Constitution of India for not placing the CA report before detaining authority the reason given is to avoid delay in taking action against the detainee. As the offences were of 04.10.2023 and 17.10.2023, foreign and country liquor was found in possession of the detainee. Wardha District is a dry city. The selling of liquor is prohibited. The CA reports were not received by respondents to take preventive action and as to avoid delay without CA report, the order is passed. We do not think that this argument of the learned counsel can be accepted. If the detention is on the ground that the detainee is indulging in manufacture or transport or

sale or arrack then 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 detenue 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 before it that the arrack dealt with by the detenue is an arrack which is dangerous to the public health to attract provisions of the Act and if the detaining authority is satisfied that such a material exists either in the form of report of Chemical Examiner or otherwise, copy of such material should also be given to the detenue to afford him an opportunity to make a effective representation. C.A reports, which were supplied to the detenue are of earlier crimes.

21) 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 provision 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 agree with the arguments made by the petitioner that it should be based on some material and the copies of such material should be given to the detenue. The petitioner has relied on judgments:-

- (i) Haresh Vinayak Patil Vs. Shri. Shivanandhan and ors. 2008 ALL MR (Cri.) 887.
- (ii) District Collector Ananthapur and anr. Vs.Laxmanna (2005) 3 SCC 663.
- (iii) Dhanubai @ Dhanno Yashvant Netlekar Vs. State of Maharashtra and ors. Cri.W.P No.1527 of 2023 (decided ohn12.01.2024)

22) Though the documents were supplied to the detenue, copies were not legible, which amounts to non communication of grounds.

23) On above mentioned grounds, we come to the conclusion that the detention order cannot be sustained. In view of such conclusion, we do not think it necessary to go into other grounds raised by detenue. Therefore the writ petition is allowed.

24) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(VIBHA KANKANWADI, J.)