



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

CRIMINAL WRIT PETITION NO.395 OF 2024

Jitendra @ Jitu Ranbhid Meshram (in jail),
Aged 39 years, Occup. Labour, R/o
Sangam/Rehabilitation, Tahsil, Bhandara,
Dist. Bhandara, Maharashtra-441904.

Petitioner

-Versus-

1. The State of Maharashtra, through its
Secretary, Home Department, (Special)
Mantralaya, Mumbai.
2. The District Magistrate and Collector
Bhandara, District Bhandara.
3. The Superintendent, Bhandara District,
Prison, Bhandra, Maharashtra
4. The Police Inspector, Police Station,
Jawahar Nagar, District Bhandara.

Respondents

Mr.Burhanul Hasan, Advocate for the petitioner.
Mr.M.K.Pathan, APP for respondent Nos.1 to 4

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

Date of Reserving the judgment:- 27/08/2024

Date of Pronouncing the judgment:- 02/09/2024

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

Heard.

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

3. The petition challenges the detention order passed by respondent no.2 against the petitioner, bearing no. O.NO/AK/DAND-1/C.R.03/MPDA/120/24 on 02.02.2024 and its approval dated 12.02.2024 passed by respondent no.1 by invoking the powers of this Court under Article 226 of the Constitution of India.

4. The order in question is passed tagging the petitioner as a “Bootlegger”. Among the four cases forming the basis of detention order and past history, Respondent no.2 had considered C.R. no.285/2023 under section 65(f) Maharashtra Prohibition Act, registered on 28.10.2023, which is still under investigation. The confidential in-camera statements of witnesses A and B have too been considered. The statements are alleged to be recorded on 13.12.2023.

5. The learned Advocate of the petitioner submits that, C.R. no.149/2022 under section 65(f) of the Maharashtra Prohibition Act, C.R.no.50/2023 under section 65(a) of the Maharashtra Prohibition Act, C.R.no.241/2023 under section 65(f) of the Maharashtra Prohibition Act, are pending before the concerned Court. In the first two cases as mentioned above, the petitioner has been discharged by Judicial Magistrate, First Class, Bhandara, on 01.03.2023 and 07.12.2023 respectively. The material available for detaining authority to arrive at subjective satisfaction is insufficient. He further points out that, the offences are stale and more than an year prior to the impugned detention order.

6. The learned counsel for the petitioner further submits that, the material does not explain how the bootlegging activities themselves would adversely affect public order. Manufacture of illicit liquor can be presumed to be adversely affecting public health but not always resulting into disturbance of public order. In all the offences as stated above, no conviction has been secured by the State.

7. *Per contra*, the learned APP submits that, the petitioner is habitual to commit bootlegging activities. All the crimes taken into account are similar. Preventive action was also initiated against the petitioner under section 93 of the Maharashtra Prohibition Act, wherein, he had executed a final bond of Rs. 10,000 for a good behaviour. Still the activities have not been stopped. The facts in Crime no. 285 of 2023, which is still under investigation, would show that, the detenu was preparing *Sadwa Mohapas* for straining Mohafula liquor in plastic jugs on the banks of the river Wainganga.

8. Statements of witnesses would disclose that, the incident inflicted by the petitioner on them, is aiding in promotion of alcohol addiction among school students and domestic quarrels becoming common. The opinion of the Department of Forensic Medicine and Toxicology, Government Medical College, Nagpur, shows that the samples contain 4.08% v/v of ethyl alcohol including sugar and yeasts which can be used for the distillation of intoxicating liquors. Learned APP relied upon one of the significant rulings of this Court in *MagarPansingh Pimple vs State of*

Maharashtra; 2005 LawSuit (BOM) 1257.

9. For passing the detention order, one offence and two in-camera statements are considered by the detaining authority. In all four offences are there under Section 65(e)(f) of the Maharashtra Liquor Prohibition Act and in the grounds of detention, the preventive action taken by the authority is also mentioned. Here for passing the detention order, the Crime No. 285/2023 for the offence punishable under Section 65(e)(f) of the Maharashtra Liquor Prohibition Act is considered. The raid was conducted on 28.10.2023 and 90 plastic bags each filled with 25 kg amounting total 22250 kg litre of liquor worth Rs. 15,000/- filled in five black colour tubes with 20 litre liquor in its tube under Sindhi tree were found. It was seized.

10. The notice under Section 41(A) is issued in this case. The Chemical Analyser report is not available in this crime though the sample was sent for C.A. It is still awaiting. Though the C.A. report is not there, the opinion of doctor about four percent of ethyl alcohol is injurious to health is considered by the detaining

authority while passing he order.

11. The learned counsel appearing for the petitioner by relying on the four offences has stated that the two offences which are shown is pending are already disposed by the Magistrate, which is not considered while passing the detention order. It appears that said crimes (no.149 of 2022 and 50 of 2023) are not considered for passing the detention order. Hence, the submission made by the petitioner cannot be considered. The detaining authority has relied on the two statements. On perusal of the statement of the witnesses A and B, it reveals that the detaining authority has completed only formality of considering the statements of two witnesses. We have gone through the statements of two witnesses, it appears that both the witnesses have given identical statement. It is nothing but copy paste statements. The statements are not even verified by the person, who has recorded it. All the persons have only signed the statements. It is even seen by the detaining authority and has stated about satisfaction which shows that how mechanically it is signed by the authority without even verifying whether it is recorded and verified by the said person. No specific incident is mentioned in

the said statement. General character of the petitioner is stated by both the witnesses. It is observed by this Court in **Criminal Writ Petition No.697 of 2022 (Chandbee Usman Patel Vs. The State of Maharashtra and ors)**. In this case, it is held as under:-

13. Our findings on the contents of the two witnesses' statements are supported by observations of this Court in Shaikh Usman Shaikh Maheboob (supra), which referred to two confidential witnesses where it was held that such statements suggest that the detenue is a dangerous person, who habitually indulges in bootlegging activities. That Judgment has held such incidents to be irrelevant and unreliable for arriving at a subjective satisfaction to be recorded under Section 3 of the Act while passing the detention order.

12. The learned counsel appearing for the petitioner has relied on the judgment of this Court in **Criminal Writ Petition No.697 of 2022 (Chandbee Usman Patel Vs. The State of Maharashtra and ors.)** in which it is held that the two confidential statements suggest that the detenu is a dangerous person, who habitually indulges in bootlegging activities. The judgment has held such incident to be irrelevant for arriving at a subjective satisfaction while passing detention order.

13. Another ground on which the petitioner has relied is about the delay in passing the detention order. While considering the issue of delay, we have to go through the dates of (incidents) offences. The time will not start to run from the date of the last offence that was registered. For considering the delay, we will have to consider the time till last offence, then the in-camera statement. Verification by superior Police Officer and also by detaining authority. It reveals that the crime which is considered by the detaining authority is of 28.10.2023 and the statements of witnesses are of 13.12.2023. The detention order is passed on 02.02.2024. No specific incident is mentioned by both the witnesses. The authority has casually signed the statement. Therefore, there is inordinate delay.

14. The respondent No.2 has not filed the reply. There is no explanation for delay in passing the detention order. Stale crimes are considered while passing the detention order, which itself vitiates the detention order passed by the detaining authority.

15. The learned counsel appearing for the petitioner has

placed reliance on the judgment in **Criminal Writ Petition No.104 of 2024, Rama Devchand Kumbhalkar Vs. The State of Maharashtra** passed by this court in which reliance is placed on the case of:-

11. The Hon'ble Apex Court in the case of Pradeep Nilkanth Paturkar vs S Ramamurthi and others reported in AIR 1994 SC 656 has observed that the unexplained delay whether short or long, specially when the petitioner has taken a plea of delay, vitiates the detention order. In para 9 of the said exposition in Pradeep Nilkanth Paturkar's case (supra) the Hon'ble Apex Court has referred to its earlier decision in the case of T A Abdul Rahman V/s. State of Kerala reported in (1989) 4 SCC 741 in paragraph 15 as follows:-

“The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order,

the Court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.”

16. So far as the delay is concerned there is no explanation offered by respondent No.2/Detaining authority. Therefore, keeping in view the exposition of law laid down by the Hon’ble Supreme Court in the case of **Pradeep Nilkanth Paturkar’s case** (supra) and since no plausible explanation has been offered by detaining authority for passing the detention order it will have to be held that there was delay in passing the order of detention”.

17. Each and every bootlegging activity cannot be presumed to be adversely affecting public health. In this case though the samples were send for C.A. the report was not received and not considered by the authority. It is observed by this Court in **Writ Petition No. 75 of 2022 (Hanif Karim Luluwale Vs. State of**

Maharashtra and ors.) that any bootlegging activity in which manufacture of illicit liquor is involved can be presumed to be adversely affecting public health. But, there is no presumption in fact or law that every incidence of disturbance of public health would necessarily result in disturbance of public order.

18. The learned counsel appearing for the petitioner has also relied on the following judgments:-

1. Criminal Writ Petition No.400 of 2023 (Jumma @ Munna Burhan Hiriwale Vs. The State of Maharashtra and ors.
2. Aameena Begum Vs. State of Telangana Criminal Appeal No.2706 of 2023, (2023) 9 SCC 587.
3. Nenavath Bujji etc. Vs. State of Telangana and ors. reported in (2024) SCC OnLine SC 367.

19. Considering the above said observations, we, thus, find the substance in the present Writ Petition.

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

Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)