



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

CRIMINAL WRIT PETITION NO.464 OF 2024

Moreshwar Sudhakar Nighot,
aged about 38 years, R/o Neri, Punarvasan,
Arvi, Tah.Arvi, District,Wardha.

Petitioner

-Versus-

1. State of Maharashtra, through Principal Secretary (Appeals and Security), Home Department, Mantralaya, Mumbai-32
2. The District Magistrate Wardha, Tq. and District Wardha..

Respondents

Mr.Santosh D.Chande, Advocate for the petitioner.
Mr.M.K.Pathan, APP for respondent Nos.1 and 2.

**CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.**

**Date of Reserving the judgment:- 18/11/2024
Date of Pronouncing the judgment:- 19/12/2024**

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

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

2. The petitioner is challenging the order passed by the Respondent No.2, under Section 3(1) of the Maharashtra

Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act) dated 08.04.2024 and confirmed on 19.04.2024 by the Respondent no.1 under Section 3(3) of the said Act.

3. Police Station Arvi, District Wardha initiated proposal of detention of detinue on 22.03.2024. The proposal was received by the Respondent No.2 through Superintendent of Police, Wardha, vide letter dated 02.04.2024 for taking an action against the petitioner as a 'Bootlegger'.

4. The detaining authority has mainly relied upon three offences occurred in the past six months while passing the detention order. These are as under:

(a) C.R. no. 302/2024 U/s. 65(e) of Maharashtra Prohibition Act, 1949 dated 14.03.2024 registered at Police Station, Arvi, District Wardha.

(b) C.R. no. 185/2024 U/s. 65(e) of Maharashtra Prohibition Act, 1949 dated 18.02.2024 registered at Police Station, Arvi, District Wardha; and

(c) C.R. no. 1300/2023 U/s. 65(e) of Maharashtra Prohibition Act, 1949 dated 27.11.2023 registered at Police Station, Arvi, District Wardha.

5. It is pertinent to note that, Wardha district is a “dry area” where there is a hundred percent ban on liquor. The three offences reveal about the possession of country liquor (gavathi moha) and foreign liquor at several places, in and nearby the house of the detainee for the purpose of sale in the adjoining areas of Neri Punarwasan. All of them are under investigation.

6. The petitioner emphasizes on the grounds as under:

- a) The action taken by the detaining authority is without substantial proof and no hearing opportunity is given to the detainee.
- b) The in-camera statement recorded of the witness “A” does not provide details with respect of day, date and time of the said incident.
- c) The documents do not disclose the date on which the order of approval of the State was served on the petitioner in order to render him the right of making an effective representation.

d) While making reference to the old and past record, the respondents have stated that the same has not been considered in the detention order. However, the said material has been taken into consideration.

7. Learned counsel for the petitioner, Shri Chande, submitted that, the petitioner was not informed about the approval of the order by the Respondent No.1 within a period of three months. He further contended that the statement of witnesses "A" and "B" have been prepared mechanically without verifying their truthfulness and the date on which the same were certified by the Competent Authority does not appear on the certified copies.

8. The counsel further stated that, the letter dated 08.04.2024 detaining the petitioner as a bootlegger was served upon him on 29.04.2024 just before the hearing of the matter by the Advisory Board.

9. Learned A.P.P, Shri Pathan, vehemently opposed the submissions made by the petitioner. In the Chemical Analyzer's report in C.R. no. 1300/2023, 17.47% v/v of ethyl alcohol was found in the water which is extremely harmful to the health of the

consumers. He further stated that, in another eight offences which were a part of the detention order, there was an offence against a person vide C.R. no. 786/2023 U/s. 324, 504 of the Indian Penal Code.

10. Learned A.P.P. submitted that despite four preventive actions and execution of bond of good behaviour against the petitioner, he did not restrain himself. The approval order under Section 3(3) of the MPDA Act, was provided on 19.04.2024 to the petitioner, well before the date of hearing which can very well be seen from, Annexure R-2-1. The hearing was conducted on 19.05.2024.

11. We have considered the rival submissions of both the parties.

12. With the assistance of both the learned counsel appearing for the parties, we have perused the detention order dated 08/04/2024 passed by the respondent No.2 and the order dated 19/04/2024 passed by the respondent No.1. Though, the detention order considers three offences by stating in the order that the offences which are committed by the detinue in the span of six

months are considered, however, the criminal history of the petitioner's involvement in other offences, which were registered from 2022 to 2023 i.e before six months were also considered by the detaining authority.

13. Three offences which have occurred within a span of six months are considered while passing the detention order. It is the submission of the learned counsel appearing for the petitioner that the report of Forensic Laboratory in two offences are not received or made available, is a fact not in dispute. One report is mentioned in Crime No. 1300 of 2023, no cognizance could have been taken in other two offences for want of report of Chemical Analyzer indicating that what was seized from the petitioner was prohibited liquor. So, the offences which ought not to have been considered by detaining authority have been considered for reaching the subjective satisfaction, for this reason the impugned order suffers from the vice of non consideration of relevant material. The reports of the Forensic Science Laboratory are not received as such it has to be inferred that before passing the detention order, the detaining authority was not conscious of the

fact as to absence of the report from the Forensic Science Laboratory in relation to the petitioner's involvement in the offence of bootlegging.

14. While considering the material as regards to the recently registered three offences against the petitioner punishable under the provisions of the Maharashtra Prohibition Act, the earlier offences ought not to have formed basis for ordering detention. The subjective satisfaction recorded by the detaining authority for ordering detention sans consideration of the aforesaid issue i.e. absence of report from the Forensic Science Laboratory in the recently registered offences.

15. The Hon'ble Apex Court in the matter of *District Collector, Ananthapur Vs. V.Laxmnna*, reported in *2005 DGLS (SC) 274* in paragraph Nos.7 and 8 has made following observations:-

“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”.

16. As per the guidelines of the Hon’ble Apex Court *supra*, it has to be held that the offences which are punishable under the provisions of the Maharashtra Prohibition Act should be effectively dealt with under the said Act. The report of Chemical Analyzer for bringing home the guilt of the accused is necessary for proving the offence under the Maharashtra Prohibition Act. In absence of such report, it cannot be presumed or cannot be said to have provided basis for recording the subjective satisfaction so as to

infer a strong case against the accused, like the petitioner.

17. The Authority has also relied on the two confidential statements of the witnesses. On perusal of the statements, it appears that a general statement is made by the witness-A. He has not mentioned the day and date when the specific incident took place. Only the general nuisance caused because of the liquor shop of the petitioner is mentioned by the witness. Another statement is about the day of *Shiv Jayanti*. No specific allegations about disturbing the public order is mentioned, therefore, the statements of the witnesses are also not helpful to the authority to pass the detention order.

18. The learned APP has relied on the judgment of ***Magar Pansingh Pimple Vs. State of Maharashtra and anr.*** reported in ***2006 ALL MR (Cri.) 491*** in support of his argument that the bootlegger involved in the business of illicit liquor, the sad business activities are prejudicial to maintenance of public order. Considering the judgment of the Hon'ble Apex Court and to prove the disturbance to the health of public at large, the reports of

Chemical Analyzer are important, only the report of Chemical Analyzer in one offence is not sufficient to pass the detention order. We are also convinced that the authority has not taken into consideration the acquittal in number of cases in earlier offences. Further, as and no Chemical Analyzer Reports in all the offences are produced on record, it is sufficient to set aside the order of the detaining authority. Hence, we pass the following order.

19. The Writ Petition is allowed in terms of it's prayer clause (i). The petitioner be set at liberty forthwith, if not required in any other crime.

20. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)