



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

CRIMINAL WRIT PETITION NO.505 OF 2024

Archana Ravindra Sonone
Aged : 36 years Occp.: Home-maker
R/o Khadakpura, Ashti, Tah. Ashti
Distt. Wardha

Petitioner

-Versus-

1. The State of Maharashtra, Through the Additional Chief Secretary, Home Department, Having Office at Mantralaya, Fort, Mumbai-32
2. The Collector and District Magistrate, Wardha Having Office at Collectorate Office, Wardha Distt. Wardha
3. The Superintendent, Wardha Central Jail, Class-1 Wardha Tah. & Distt. Wardha

Respondents

Shri Dhiraj Ailani h/f Adv. U.J. Deshpande, counsel for the
petitioner.

Mr. M.K. Pathan, APP for State.

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

Date of Reserving the judgment:- 03/09/2024

Date of Pronouncing the judgment:- 19 /09/2024

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

1. Heard.

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

3. By this petition, the petitioner is challenging the validity of the order passed by the Respondent no.2 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), on 20.03.2024. The petitioner has presently been detained in the District Central Prison, Wardha.

4. A proposal to detain the petitioner was initiated on 21.01.2024 by the Police Inspector of Police Station, Ashti, Dist-Wardha. The proposal was submitted to the District Magistrate, Wardha on 06.03.2024. The basis of which was the registration of twenty seven offences between 2019 to 2023 and two confidential statements of witnesses.

5. The perusal of the detention order indicates that, several

bootlegging crimes have been registered against the petitioner. Out of twenty seven crimes, eleven offences have been taken into consideration for passing the detention order, from which one offence, i.e., 331/2023, filed on 22.12.2023 at Police Station, Ashti, Wardha, is of the last six months, i.e., (most recent). All the crimes registered under Section 65(e) of the Maharashtra Prohibition Act, 1949. The crimes include continuous engagement in the illegal business of liquor, selling the same to the villagers and youth, using force against innocent people. The three offences against which preventive action u/s 93 of Maharashtra Prohibition Act, 1949, has been taken :

6. Learned counsel for the petitioner, Shri Ailani, submitted that, the detenu has been rendered both as a bootlegger and a dangerous person. The petitioner was released on bail in four offences and in three of the cases, she was released on execution of bond of good behaviour. The counsel contends that, the Respondent no.2 (detaining authority), endorsed the in-camera statements as, '*Verified in front of me by S.D.P.O, (Arvi)*' on 19.03.2024 when those statements were only '*seen and verified*' by him on 02.02.2024.

7. Shri Ailani, stressed upon the ground that, for want of timely legal advice, the petitioner could not avail the remedy to

make representation to the State Government. Therefore, her liberty in view of Article 21 of the Constitution is violated and curtailed.

8. Learned APP, vehemently opposed the submissions of the petitioner. He submitted that, it is clearly mentioned in the detention order, that the petitioner falls under the definition of a bootlegger and not a dangerous person. He states that, there was no need to verify the in-camera statements by Superintendent of Police, when it was already verified by the Sub-Divisional Police Officer, Arvi. In this regard there is a circular of the State Government, Home Department, Mumbai, dated 19th September, 2002, where it is very clear that, in the jurisdiction of Commissioner of Police, the Asst. Police Commissioner or Deputy Police Commissioner, and in the jurisdiction of Collector/Superintendent of Police, must verify the said statements. He further submitted that, in the preventive action taken against the offences, the bonds were executed by the petitioner for keeping the peace and good behaviour, even then she committed C.R. no. 248/21 and C.R. no. 256/21. She was

acquitted in some of the offences. The learned APP has placed reliance on the judgment of this Court in the case of *Badal Manoj Sahare Vs. State of Maharashtra and ors.* reported in **2024 ALL MR (CRI.)102**. In paragraph No.18 of this judgment, it is observed as under:-

“Though the petitioner was being prosecuted under the ordinary law, but of no use. On the contrary, the danger to public order and life increased in view of the activities of the petitioner, a bootlegger, due to his continuously indulging in the business of illicit liquor, Therefore, acquittal in eight cases out of 27 cases registered against the petitioner will not come in aid to the petitioner. The Detaining Authority has rightly restored to the extraordinary law of preventive detention under the MPDA Act and, therefore, the decision in the case of **Devidas Lalji Ade [2023 ALLMR(Cri.)130]**(supra) relied by the learned Counsel for the petitioner, does not apply to the case in hand”.

The learned APP has also placed reliance upon the judgment in the case of *Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad* reported in **2024 ALL MR (Cri.) 680**.

9. In between the period of 01.12.2022 to 01.05.2023

of maintaining good behaviour, she again committed C.R. no. 24/2023 and C.R. no. 93/2023. Learned APP, further submitted that, the copy of the approval order of the detention dated 28.03.2024 was served to the petitioner on 30.03.2024. Therefore, there was ample time for the petitioner to make representation before the State Government and hence there is no violation of Article 21 of the Constitution. Hence, prayed to dismiss the petition.

10. The petitioner, who is a lady is detained as a bootlegger. Twenty seven offences are registered for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act. While passing the order, the detaining authority has considered the acquittal orders and discharge cases. The recent one crime is considered for passing the detention order.

11. The petitioner has placed reliance on the judgment in the case of *Nenavath Bujji etc. Vs. State of Telangana and ors.* Reported in **2024 SCC OnLine Sc 367** in support of argument

that though number of cases are registered against her she cannot be termed as 'histroy sheeter', it has been observed as under:-

“the detenu without recording any subjective satisfaction that such habituality has created a “public disorder”. Merely, because the appellant detenu has been charged for multiple offences, it cannot be said that he is in the habit of committing such offences. Habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the matrices of public order”

12. It has also been observed in the said authority in paragraph No.31 that:-

“What has been alleged against the appellant detenu could be said to have raised the problems relating to law and order but we find it difficult to say that they impinged on public order. This Court has time and again, reiterated that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance of public order” the activities must be of such a nature that the ordinary laws cannot deal with them or prevent subversive activities affecting society. 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”.

The learned counsel appearing for the petitioner has

also relied upon the judgment of this court:-

- (i) Criminal Writ Petition No.820 of 2021 (Ratnamala Mukund Balkhade Vs. State of Maharashtra and ors. Decided on 01.07.2022.
- (ii) Criminal Writ Petition No.118 of 2024 (Tanvir Shaha Alim Shaha Vs. State of Maharashtra and anr. Decided On 09.05.2024.

13. The petitioner has stated that there is no live-link as the offence, which was considered was of 22.12.2023 and order was passed on 28.03.2020 after six months. On perusal of the grounds of detention, it appears that the similar offences are committed by this petitioner, but the offence which is considered before six months i.e. 331 of 2023 is registered on 22.12.2023. No doubt the time starts from the date of recording the statements of secrete witnesses, verification by the authority from it we can consider the delay for passing the detention order. On perusal of the original statements, it appears that though the statements were seen and verified, the mere formality is completed by the persons who have signed it. The statement is recorded on 19.12.2023, but it is not verified by the person, who has recorded it. It is recorded in the

presence of the Police Officer, but he has not mentioned the date. It is not verified by the said person not even verified by SDPO, who has given endorsement as “verified in front of me by SDPO(Arvi)”.

14. The detaining authority has signed it on 19.03.2024 and it is seen and verified by SDPO on 02.02.2024. Though the signatures of all the authorities are obtained, they have not seen, whether the statements are verified. There is no subjective satisfaction to the truthfulness of statements.

15. The learned APP placed reliance on the circular of the State Government, Home Department Mumbai, dated 19.09.2022 it is mentioned that the jurisdiction of Commissioner or Police the Assistant Police, Commissioner or Deputy Police Commissioner and in the jurisdiction of Collector/Superintendent of Police must verify the said statements. Though, it is mentioned in the statement of both the witnesses that verified on behalf me and seen, it is not even seen by the authority whether the statement which is considered is verified or not by any one of

them. Moreover, the general statement is made by both the witnesses about the general character of the person. No specific incident is mentioned by the witnesses therefore, mere formality of recording the statement cannot be considered while passing the detention order. The statement does not show that it affects the public order.

16. Apart from above, fact remains that the report of the Chemical Analyser 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 the strong case against the accused like the petitioner. In absence of report of the Chemical Analyzer gravity or seriousness of the prosecution cases loses its significance.

17. The crime which is considered does not show that it affects the public order. The CA reports are not filed on record as

the CA report was not available. CA reports in earlier crimes cannot be considered at the time of passing the detention order. There is delay in passing detention order and no public order effects or public health affects by the offence, which is considered by the detaining authority.

18. In the result, we find that this Writ Petition deserves to be allowed and it is allowed in terms of it's prayer clause (1 & 2).

19. The petitioner be released forthwith, if not required in any crime.

20. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)