



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

CRIMINAL WRIT PETITION NO.670 OF 2024

1. Rajesh Rambacchan Chandel,
aged about 40 years, occ Labour, R/o
Jagdish Nagar, Makardhokda, Katol Road,
Police Station, Gittikhadan, Nagpur **Petitioner**

-Versus-

1. State of Maharashtra, Through Concerned
Officer/Secretary, Home Department
(Special), 2nd Floor, Mantralaya, Madam
Cama Road, Hutatma Rajguru Chowk,
Mumbai-400032
2. State of Maharashtra, Through Commissioner
of Police, Nagpur City, Civil Lines, Nagpur
3. State of Maharashtra, Through Advisory
Board Constituted under provisions of
Maharashtra Prevention of Dangerous Activi-
ties of Slum-lords, Bootleggers, Drug Offend-
ers, Dangerous Persons, Video Pirates, Sand
Smugglers and Persons Engaged in Black
Marketing of Essential Commodities Act,
1981, Address at Home Department (Special),
2nd Floor, Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk, Mumbai- 400032 **Respondents**

Adv. Abhishek S. Shukla, counsel for the Petitioner.
Adv. M.K. Pathan, A.P.P. for R/1 to 3 for Respondents.

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

DATE : 20/12/2024

ORAL 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 counsel appearing for the parties.

3) By this Petition, under Article 226 of the Constitution of India, the petitioner seeks to quash and set aside the impugned order dated 03.04.2024 passed by the Respondent no.2 in exercise of the powers conferred by Section 3(1) 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 "MPDA"); the petitioner further lays challenge to order dated 12.04.2024 passed by the Respondent no.1- Section Officer, Home Department (Special) under sub-section 3 of Section 3 of the MPDA, approving the order dated 03.04.2024 passed by the Commissioner of Police, Nagpur City. The confirmation of the impugned order dated 28.05.2024 passed by the Respondent no.1 under sub-section 1 of Section 12 of the MPDA, in view of the representation made by the

petitioner and based on the opinion/report of the Advisory Board is too, prayed to be quashed and set aside.

4) The petitioner was directed to be detained at the Nashik Central Prison, Nashik, vide order dated 03.04.2024, bearing no. DET/MPDA/Excise/PCB/15-A/2024.

5) Three offences bearing C.R.no. 112/2023 dated 02/10/2023, C.R. no. 78/2023 dated 05/10/2023, in the jurisdiction of Excise department, Nagpur and 928/2023 dated 12/12/2023 under Gittikhadan Police Station, all under 65(e) of the Maharashtra Prohibition Act, 1949, are relied upon for passing the detention order.

6) The grounds raised in challenge to these orders in the Petition are:

(a) In view of the approval of detention order by the respondent no.1 on 12/04/2024, the petitioner submitted representation to the respondent nos. 1 and 3 via post. The respondent no.1 has mechanically confirmed the detention order

vide order dated 28.05.2024 without considering the representation of the petitioner.

(b) The impugned order does not explain the inordinate delay caused in passing the detention order of the gap of almost four months. It also constitutes of ambiguity regarding veracity of the in-camera statements of the confidential witnesses.

7) The above stated crimes comprise of supply of notice as per Section 41(a) (1) to the petitioner with respect to the seizure of the “Gavathi Hath Bhatti Daru” from the place of his residence. Preventive action was taken against the detainee to prevent him from committing bootlegging activities under Section 107, 116(3) of the Cr.P.C.

8) Learned counsel appearing for the petitioner, Adv. Shukla, submitted that, the grounds taken in the order of detention are of bootlegging and the statements of witnesses reflect grounds of dangerous person which are not taken into account. He further stated that, in-camera statements have never culminated into any complaint or proceedings. The learned counsel contended about

ambiguity in the disclosure of the manner of verification of the statements by confidential witnesses.

9) The learned counsel appearing for the petitioner has placed his reliance on the following judgments passed by this Court:-

- (1) Criminal Writ Petition No.317 of 2024
(Mrs.Naina Ganesh Bhange Vs. The District Magistrate, Wardha) Decided on 24/07/2024
- (2) Criminal Writ Petition No. 666 of 2022 (Anil Motirm Rathod Vs. State of Maharashtra and or.)
Decided on 28/07/2023.
- (3) Criminal Writ Petition No.130 of 2024
(Armansingh Mansingh Tak Vs. The District Magistrate and anr.) Decided on 22/07/2024
- (4) Criminal Writ Petition No. 400 of 2023 (Jumma @ Munna Burhan Hiriwale Vs. The State of Maharashtra and ors.) Decided on 6/10/2023.
- (5) Criminal Writ Petition No.605 of 2023 (Sachin Shriram Meshram Vs. State of Maharashtra and ors.) Decided on 01/02/2024.

- (6) Criminal Writ Petition No. 844 of 2023
(Mukesh Dadduji Rajpande Vs. State of
Maharashtra and anr.) Decided on 05/04/2024.
- (7) Criminal Writ Petition No.90 of 2024 (Ramesh
Tarachand Rathod Vs. The State of Maharashtra
and anr.) Decided on 30/04/2024.
- (8) Criminal Writ Petition No.784 of 2023 (Sachin
Barkuki Masram Vs. State of Maharashtra and
anr.) Decided on 22/03/2024.
- (9) Criminal Writ Petition No. 782 of 2023 (Sanjay
Kisanrao Kathote Vs. State of Maharashtra and
anr.) Decided on 22/03/2024.
- (10) Criminal Writ Petition No.183 of 2024 (Yogesh
Udaram Gokhe Vs. The State of Maharashtra
and ors. Decided on 3/07/2024.
- (11) Criminal Writ Petition No. 843 of 2023 (Nafis
Khan Aziz Khan Vs. State of Maharashtra and
anr.) Decided on 01/07/2024.
- (12) Criminal Writ Petition No.903 of 2023
(Abhishek @ Golu Pawan Kharbalkar Vs. State
of Maharashtra and anr. (Decided on
26/06/2024).

10) On the other hand, Learned A.P.P., Mr.M.K. Pathan, relied upon the affidavit in-reply. He submitted that the petitioner along

with his associates roam around holding weapons like knife, iron rod and lathis, transporting Gavathi (Hathbhatti) liquor, pointing weapons towards the public, threatening and abusing them filthily which has created terror in the minds of people around the area of Gittikhadan.

11) He further submitted that, the respondent no.2- Commissioner of Police, Nagpur, vide letter dated 16/04/2024 had informed the petitioner that his representation cannot be decided in view of the fact that the said detention was approved by the State on 12/04/2024.

12) He emphasized on the fact that, every communication regarding the status of the representation of the detinue along with the validity of his right regarding the same and supply of each document has been made to him within the stipulated time. The learned APP has relied on the following judgments in support of his argument:

- (1) Vinod Dhannulal Jaiswal Vs. District Magistrate Aurangabad and ors. reported in 2024 ALL MR (Cri.) 680.

- (2) Bhushan Vijay Rane Vs. The State of Maharashtra reported in 2017 ALL MR (Cri.)2066.
- (3) Vicky Satyawar Chavan @ Barkya Vs. The Commissioner of Police Mumbai and ors. reported in 2020 ALL MR(Cri.) 3741.
- (4) Neha Telange Vs. State of Maharashtra (Criminal Writ Petition No. 151 of 2022)
- (5) Magar Pansingh Pimple Vs. State of Maharashtra reported in 2006 ALL MR (Cri.) 491
- (6) Hemalata Kantilal Shah Vs. State of Maharashtra reported in AIR 1982 SC

13) Heard both the parties.

14) In three offences the petitioner is detained as bootlegger. The offences are registered against him under the Maharashtra Prohibition Act. The main ground for challenging the detention order is that the representation made by the petitioner is not considered and not communicated to the petitioner and therefore, the detention order vitiates.

15) The learned APP has taken us through the record and pointed out that at page No.168, the authority has issued the letter on 16/04/2024 informing the petitioner that the representation of

the petitioner cannot be decided as the order of detention was approved by the Government on 12/04/2024 and the representation was received on 16/04/2024 and therefore, the power to decide the representation stands extinguished. Therefore, there is no substance in the ground of not deciding the representation.

16) In all the three offences, which are considered by the authority, the CA reports are filed on record. As per CA reports, there is Ethyl Alcohol in the samples and as per the opinion of the Government Medical Officer of the Government Medical College, Nagpur such Alcohol, when consumed in excess amount can be hazardous to human health and in some cases can cause death. The opinion given by the doctor clearly shows that it depends upon the consumption of the quantity of the liquor. The opinion of the Medical Officer cannot be considered that it will affect the health of the public at large. From the offences, which are registered and the statements, it does not appear that it will cause the disturbance of the public order. The health of public at large

will not be affected and therefore, there is no question of disturbance of public health and public order.

17) Another ground is about the delay from the date of last offence to the date of passing of the detention order. According to the petitioner, there is delay of four months from the date of last crime. No doubt, the delay is calculated from the date of recording of the statements and its verification, in explanation, the respondents have stated that in-camera statements were recorded on 07.03.2024 and 11.03.2024 by the Inspector, State Excise B-Division, Nagpur. Said in-camera witnesses were produced before the Dy. Superintendent No.1, State Excise, B-Division, Nagpur, who has personally verified with witnesses on 22.03.2024 regarding the truthfulness and genuineness of the in-camera statements and the fear expressed by the in-camera witnesses regarding the detinue. The Dy. Superintendent No.1, State Excise, B-Division, Nagpur, after verifying and conversing with the witnesses, recommended the proposal to the Superintendent No.1, State Excise, B-Division, Nagpur on 22.03.2024. The Superintendent No.1, State Excise, B-Division, Nagpur verified the

in-camera statements and after scrutinizing, recommended it to the Commissioner of Police, Nagpur i.e. the Detaining Authority and on 26.03.2024, it was received in the Detention Cell, Crime Branch, Nagpur on 27.03.2024. After scrutiny of documents, on 28.03.2024, the Detention Cell, Crime Branch, Nagpur initiated the proposal to the Detaining Authority i.e. Commissioner of Police, Nagpur. It is submitted that the Detaining Authority *prima facie* found, that it was a fit case for detention under MPDA and directed the office of the Detention Cell, Crime Branch, Nagpur to prepare compilation, translation, fair typing and comply with other requirements of law. The Detention Cell, Crime Branch Nagpur complied with these directions and on 28.03.2024, the draft of grounds of detention were forwarded to the Deputy Commissioner of Police (Detection), Crime Branch, Nagpur City, who went through the draft of the grounds of detention and other relevant documents and gave his endorsement on 28.03.2024 which were then forwarded to the Additional Commissioner of Police (Crime), Nagpur City. The Additional Commissioner of Police (Crime), Nagpur City went through the draft of grounds of detention and other relevant documents and gave his endorsement on

30.03.2024, which was then forwarded to the Joint Commissioner of Police, Nagpur City. The Joint Commissioner of Police, Nagpur, went through the draft of grounds of detention and other relevant documents and gave her endorsement on 01.04.2024 before forwarding to the Detaining Authority. The Detaining Authority carefully went through the grounds of detention and other relevant documents and after being subjectively satisfied, passed the detention order and on 03.04.2024, the detenue was detained.

18) After carefully considering the explanation given by the respondents, it appears that there is no delay but there is delay in no proximity to the date of detention from the events and the last incident.

19) The learned APP has relied on number of judgments in support of his argument that as the CA reports are there, there is no any delay in passing the order of detention and the opinion of the doctor is also there, therefore, this is not the case to set aside the order however, in view of public order, the health of public at large will not be disturbed even after perusal of the CA reports and the opinion of the doctor. Ethyl Alcohol is there in the said samples.

The opinion of doctor shows that it will be hazardous if the persons consume it beyond limits. It depends on the consumption of quantity. It does not explain as to how bootlegging activity per se bad it self would adversely affect the public order. Any bootlegging activity in which manufacture of illicit liquor is involved can be presumed to be adversely affecting public order. 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. The authorities would be required to satisfy themselves as to how disturbance of public health in certain cases would result into breach of public order. Such satisfaction has not been reached in the present case.

20) Hence, we are of the opinion that this is a fit case where, we can exercise our extraordinary jurisdiction to set aside the order passed by the detaining authority. Accordingly, we quash and set aside the impugned orders dated 03.04.2024, 12.04.2024 and 28.05.2024 passed by the respondent nos.1, 2 and 3 as per prayer clause (1) and (2).

21) The petitioner be released forthwith, if not required in any other case.

22) Rule is made absolute in the aforesaid terms.

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