



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1992 OF 2024

Chhayabai w/o Ramesh Sakat

.. Petitioner

Versus

1. District Magistrate, Jalgaon.
2. The State of Maharashtra
Through the Additional Chief Secretary,
Govt. of Maharashtra, Home Department,
Mantralaya, Mumbai-32.
3. The Jail Superintendent
Akola Central Prison.

.. Respondents

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Ms. M. R. More and Mr. A. A. Kashyap, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 17 JANUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. M. R. More and Mr. A. A. Kashyap for the petitioner and learned APP Mr. G. A. Kulkarni the for respondents – State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the

parties.

3. The petitioner challenges the detention order dated 18.04.2024 bearing No. Dandapra/KAVI/MPDA/12/2024 passed by respondent No.1 as well as the approval order dated 26.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.2, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, five offences were considered i.e. **(i)** Crime No.307 of 2020, **(ii)** Crime No.174 of 2021, **(iii)** Crime No.286 of 2021, **(iv)** Crime No.252 of 2023 and **(v)** Crime No.72 of 2024. All the aforesaid offences were registered with Ramanand Nagar Police Station, District Jalgaon for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act. Learned Advocate for the petitioner submits that in respect of last offence which is considered under the caption “Details of offences registered recently within six months”, the detaining authority had taken

note of Crime No.72 of 2024 registered under Section 65(e) of the Maharashtra Prohibition Act, 1949, however, on the date of passing the detention order, the CA report was not received in respect of the said offence. He further submits that the detaining authority has considered old and stale cases to come to the conclusion that the petitioner is a bootlegger. There was no live link in respect of other four offences, which were also considered. In all the cases, the petitioner has been served with notice under Section 41(A) of the Code of Criminal Procedure. The statements of in-camera witnesses 'A' and 'B' would show that public was not involved. At the most law and order situation would have been created. Further, action was taken under Section 93 of the Maharashtra Prohibition Act, 1949 against the petitioner, however, it was not taken to the logical end. This shows that the action against the petitioner was predetermined. Therefore, the impugned order is illegal and cannot be allowed to sustain.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter

referred to as the “MPDA Act”). The detaining authority has relied on the two in-camera statements and the subjective satisfaction has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP is relying upon the affidavit-in-reply filed by Mr. Ayush Prasad, District Magistrate, Jalgaon. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the conclusion that the petitioner is a bootlegger. The subjective satisfaction was arrived at on the basis of CA reports as well as in-camera statements and the contents of the FIR. In all, five offences were considered along with the two in-camera statements. After the subjective satisfaction, the detaining authority has passed a reasoned order, which is then confirmed with the opinion of the Advisory Board and, thereafter, confirmed by the State Government on 07.06.2024.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367],

(ii) Aameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743];

(iii) Kanu Biswas Vs. State of West Bengal, [1972 (3) SCC 831] wherein reference was made to the decision in **Dr. Ram Manohar Lohia vs. State of Bihar and Ors. [1966 (1) SCR 709];**

(iv) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];

(v) Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];

(vi) Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;

(vii) Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].

(viii) Arjun s/o Ratan Gaikwad Vs. The State of Maharashtra and others, [Criminal Appeal (Arising out of SLP (Crl.) No.12516 of 2024 dated 11.12.2024 :: 2024 INSC 968].

7. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the

subjective satisfaction and whether the procedure as contemplated has been complied with or not. In **Nenavath Buji** (*Supra*) itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. As aforesaid, the detaining authority had considered the aforesaid five offences and two in-camera statements. Perusal of these cases would show that the CA reports have been received in respect of first four offences and percentage of ethyl alcohol that was found was 10%, 10%, 24%/40% and 9% respectively. The detaining authority has not considered that in respect of last offence i.e. Crime No.72 of 2024, CA report was not received. The detaining authority ought not to have considered Crime No.307 of 2020, Crime No.174 of 2021 and Crime No.286 of 2021 filed against the petitioner for passing the detention order, as there was no live link. Further, it appears that the first four offences i.e. Crime No.307 of 2020 registered on 29.09.2020, Crime No.174 of 2021 registered on 20.06.2021, Crime No.286 of 2021 registered on 04.10.2021 and Crime No.252 of 2023 registered on 21.07.2023 were already considered while taking action under Section 93 of the Maharashtra

Prohibition Act i.e. Chapter Case No.06 of 2023 and final bond of two years was taken from the petitioner, still it appears that those four offences were considered by the detaining authority for passing the detention order, which is illegal. Further, the impugned order states that action under Section 93 of Maharashtra Prohibition Act, 1949 was taken against the petitioner, which prescribes for demand of security for good behaviour to be taken from such person. Section 93 (1) of the said Act empowers a District Magistrate or a Sub-Divisional Magistrate, whenever he receives information that any person within the local limits of his jurisdiction habitually commits or attempts to commit or abets the commission of any offence punishable under this Act, such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, as the Magistrate may direct. If it would have been taken to the logical end, the Magistrate i.e. respondent No.1 was entitled/empowered to take such bond of good behaviour maximum for a period of three years. Further, sub-section (2) of Section 93 of the said Act prescribes that the provisions of Code of Criminal Procedure would be applicable to any proceedings under sub-section (1) of

Section 93 as if bond referred to therein were a bond required to be executed under Section 110 of the said Code. Section 110 of the Code then prescribes the procedure for breach of such bond. That means, there is in built mechanism in the Maharashtra Prohibition Act to curtail the activities of a habitual offender. These proceedings under the Act were not taken to the logical end. Therefore, the statement by respondent No.1 that ordinary law would not have curbed the activities of the petitioner and only the detention order would have taken care of said activities in the public interest cannot be upheld.

8. Perusal of the statements of in-camera witnesses 'A' and 'B' would show that public was not involved and at the most, law and order situation would have been created. In fact, except the offences under the Maharashtra Prohibition Act, there are no other offences against her. To brand the person as a 'bootlegger', there has to be a proper evidence and, therefore, these grounds do not justify the impugned order.

9. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would

reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

10. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I)** The Writ Petition stands allowed.
- II)** The detention order dated 18.04.2024 bearing No. Dandapra/KAVI/MPDA/12/2024 passed by respondent No.1 as well as the approval order dated 26.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.2, are hereby quashed and set aside.
- III)** Petitioner – Chhayabai Ramesh Sakat shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

scm

[SMT. VIBHA KANKANWADI]
JUDGE