



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2067 OF 2024

Rani Shankar Kale
Age: 36 year, Occu.: Labour,
R/o. Sheregalli, Kalamb,
Tq. Kalamb, Dist. Dharashiv,
(Osmanabad).

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The District Magistrate/Collector,
Dharashiv, (Osmanabad),
District Dharashiv, (Osmanabad).
3. The Superintendent of Police
D.S. P. Office, Dharashiv, (Osmanabad)
Dist. Dharashiv, (Osmanabad)
4. The Police Inspector,
Police Station, Kalamb,
Tq. Kalamb, Dist. Dharashiv,
(Osmanabad).

.. Respondents

...
Mr. A. V. Indrale Patil, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 05 FEBRUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. V. Indrale for the petitioner
and learned APP Mr. A. M. Phule for the 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 29.11.2024 bearing D.O. No.2024/DC/MAG-3/KAVI-490 passed by respondent No.2 as well as the approval order dated 09.12.2024 and the confirmation order dated 11.10.2024 passed by respondent No.1, 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 the detaining authority has considered all the eight offences for passing the impugned order i.e. (i) Crime No.51 of 2022 dated 04.02.2022, (ii) Crime No.122 of 2022 dated 13.04.2022, (iii) Crime No.271 of 2022 dated 15.07.2022, (iv) Crime No.319 of 2022 dated 19.08.2022, (v) Crime No.323 of 2023 dated 15.07.2023, (vi) Crime No.519 of 2023 dated 13.12.2023, (vii) Crime No.84 of 2024 dated 21.02.2024 and (viii) Crime No.359 of 2024 dated 02.10.2024. All these offences were

registered with Kalamb Police Station, District Dharashiv for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act. Learned Advocate for the petitioner submits that the impugned order suffers from live link. The petitioner is involved in eight offences since 2022 and all the offences have been considered by the detaining authority for passing the detention order, which is illegal. He further submits that only in respect of Crime No.51 of 2022 and Crime No.319 of 2022, CA Reports have been received and in respect of other six offences, CA reports were not received. He further submits that in all the offences the petitioner was given notice under Section 41(1)(a) of the Code of Criminal Procedure and was not arrested at all. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, the incident in both the cases are personal in nature. At the most law and order situation would have been created. 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 relies on the affidavit-in-reply of Dr. Sachin Ombase, the District Magistrate, Dharashiv/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. The material before the detaining authority was sufficient to arrive at a conclusion that the petitioner was undertaking bootlegging activities and the liquor that was seized from him in some of the matters contain ethyl alcohol. Further, the statements of in-camera witnesses ‘A’ and ‘B’ show that ordinary law would not have curtailed the bootlegging activities of the petitioner. Therefore, no fault can be found in the impugned order.

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) Ameena 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].

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 Bujji** (*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. The first and the foremost fact that is required to be considered is that there should be a live link to arrive at a conclusion that the detenu is carrying out any bootlegging activity or is a dangerous person. It appears that the petitioner is involved in eight offences since 04.02.2022. The detaining authority has considered all the eight offences to arrive at a conclusion that the petitioner is doing bootlegging activities. It appears that CA reports in respect of Crime No.51 of 2022 registered on 04.02.2022 and Crime No.319 of 2022 registered on 19.08.2022 were before the detaining authority which showed that the percentage of the ethyl alcohol in the substance therein is 6% and 3% respectively. In respect of other offences, the CA reports were not before the detaining authority on the date of passing of the detention order. Therefore, how much percentage of ethyl alcohol was found therein could not have been gathered by the detaining authority. Now, taking into consideration the date of the impugned order i.e. 10.06.2024 and as in respect of

other offences CA reports were not received, the detaining authority could have relied only on Crime No.51 of 2022 registered on 04.02.2022 and Crime No.319 of 2022 registered on 19.08.2022 to consider that there was ethyl alcohol found in the substance seized in the matters. That means, in respect of the activity which had taken place more than one and half year ago the detaining authority was considering whether to detain the petitioner or not. Therefore, we hold that there was in fact no live link which could have been considered by respondent No.2. Further, it appears that Chapter Case No.04 of 2022 dated 25.05.2022 was proposed under Section 93 of the Maharashtra Prohibition Act, however, the said case was closed. Thereafter, again Chapter Case No.01 of 2024 dated 13.01.2024 under Section 93 of the Maharashtra Prohibition Act was proposed, however, after taking interim bond the said case was stayed. Section 93 of the Maharashtra Prohibition Act, 1949 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 the said procedure would have been taken to the logical end, the Magistrate i.e. respondent No.2 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 inbuilt 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.

8. Perusal of the statements of in-camera witnesses 'A' and 'B' would show that the incident in both the cases are personal in nature and at the most law and order situation would have been created. Those statements have been considered by the detaining

authority and even the detaining authority says that the petitioner is a bootlegger. In fact, except the offences under the Maharashtra Prohibition Act, there are no other offences against him. To brand the person as a 'bootlegger', there has to be a proper evidence. Therefore, these grounds do not justify the impugned order.

9. Further, in all the offences it can be seen that the petitioner was given notice under Section 41(1)(a) of the Code of Criminal Procedure and was not arrested at all. This aspect ought to have been properly considered. Reliance can be placed on the recent decision of the Hon'ble Supreme Court in ***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]***, wherein it has been observed that :-

“16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his

activities. However, that is not the case here.”

10. 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.

11. 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 29.11.2024 bearing D.O. No.2024/DC/MAG-3/KAVI-490 passed by respondent No.2 as well as the approval order dated 09.12.2024 and the confirmation order dated 17.01.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Rani Shankar Kale shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm