



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.619/2024

Ravikiran S/o Zanaklall Uike
Aged about 32 years,
Occupation- Labour,
R/o. Dhanutola, Tah. Goregaon,
District-Gondia

... Petitioner

- Versus -

1. State of Maharashtra,
through its Home Department,
2nd Floor, Mantralaya,
Mumbai - 400 032.
2. District Magistrate,
Gondia, Tah. and District Gondia.
3. Police Sub Inspector,
State Excise Office,
Gondia City, Gondia,
Tah. and District-Gondia.

... Respondents

Adv. N.R. Tekade, Advocate for the petitioner.
Adv. I.J. Damle, A.P.P. for respondent Nos.1 to 3.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 9.1.2025.

JUDGMENT (Per Mrs. Justice Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner has challenged the detention order passed by respondent No.2-District Magistrate, Gondia dated 28.3.2024 under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short “M.P.D.A. Act”) and its confirmation dated 28.5.2024 by respondent No.1.

3. The proposal of detention was forwarded by the Sub-Inspector, State Excise Office, Gondia to the District Magistrate, Gondia on 01.03.2024 stating that since the year 2023 the petitioner has continuously engaged himself in distillation of illicit liquor, possession, selling and its transportation in Dhanutola village and nearby areas including commission of violent activities such as causing harm and threat

to the public in the above-mentioned vicinity resulting into terror and insecurity in the minds of public at large as well as within the jurisdiction of Tirora Police Station, Gondia thereby arising an urgent need for his detention.

4. The Detaining Authority while passing the detention order had taken into consideration the previous four crimes occurred in the year 2023. The Detaining Authority had also relied upon recent two crimes which are as under:-

a) Crime No.332/2023 registered for the offence under Sections 65(F)(E) of the Maharashtra Prohibition Act, 1949 by the Inspector Flying Squad Division Bhandara/Gondia.

(b) Crime No.325/2023 under Section 65(E) of the Maharashtra Prohibition Act, 1949 by the Sub-Inspector, State Excise, Deori, Gondia.

5. In Crime No.325/2023 in a raid conducted by the Sub-Inspector, State Excise, Deori on Mouza Borgaon to Bagholi road, Tahsil Goregaon the seizure was effected of i) an old used

TVS Jupiter two wheeler vehicle bearing registration No.MH35AT 8211 while transporting liquor bearing price approximately Rs.1,05,000/- and ii) 30 litres of moha liquor of price approximately 1,800/-, totalling an amount of Rs. 1,06,800/- which was confiscated. A crime was registered against the petitioner under 65(A), (E) of the Maharashtra Prohibition Act, 1949.

6. Among several grounds, learned Advocate for the petitioner Mr. Tekade supplied emphasis on the following grounds contending that the detention order is illegal and perverse in nature:-

He submitted that the perusal of the in-camera statements would show that they were not verified as only reference of recording of the statements is present. Further there is no reference in respect of interaction with the confidential witnesses and that the contents of the statements are verified by the Authority. The signatures of the Authority recording the statements is also missing below the statements.

The learned Advocate vehemently submitted that the Chemical Analyzers' (CA) Reports of the concerned crimes have not been made available for examination by the Detaining Authority to arrive at the subjective satisfaction. On this ground alone, the subjective satisfaction of the Detaining Authority is vitiated.

He further submitted that respondent No.3 did not annex any bail applications or orders with the proposal of detention and sent it to respondent No.2. Therefore, due to non-supply of these documents, the proposal remained incomplete.

7. On the other hand, learned A.P.P. placed reliance upon the affidavit-in-reply on behalf of respondent No.2. He submitted that the in-camera statement of the witnesses "A" and "B" were recorded by Sub-Inspector, State Excise Gondia City and the contents of the confidential statements were verified by the Superintendent, State Excise, Gondia, which show that the petitioner had set up an illicit liquor (*Hathbhatti*), distillery on the banks of a stream at Dhanutola village and threatened the

confidential witnesses about not disclosing the information of his liquor business or they will be seen by him.

Regarding the aspect of non-placing of the bail applications and orders with respect to the crimes, learned A.P.P. submitted that all the documents which were part of the proposal of detention have been supplied to the petitioner which too contain the bail orders passed in the crimes considered by the Detaining Authority. Be that it as may. Though bail orders were not part of the documents supplied to the Detaining Authority along with the grounds of detention, the compilation contains notices under Section 41 of the Code of Criminal Procedure issued in the crimes.

8. Heard the learned Advocate appearing for the petitioner and the learned A.P.P. appearing for the respondent Nos.1 to 3 and perused the record.

9. The petitioner is detained as a bootlegger. Four offences were registered against him, however, the recent one

offence is considered for passing the detention order i.e. Crime No.325/2023 registered on 8.10.2023 under the Maharashtra Prohibition Act. In this crime, the chargesheet is filed and the case is pending before the trial Court. In earlier crimes also the offences under the Maharashtra Prohibition Act are registered.

10. The learned Advocate for the petitioner has submitted that no C.A. report is filed on record. When the petitioner is detained as a bootlegger, it is necessary to brought on record the report from Forensic Science Laboratory. One C.A. report is placed on record but it is of earlier crime. In crime which is considered for passing the detention order C.A. report is neither made available to the Detaining Authority nor it is brought before the Court. The learned Advocate for the petitioner has urged that the order of detention suffers non-application of mind. According to him, in absence of material to infer the conduct of petitioner in the aforesaid recent offence registered against the petitioner, the conduct of the petitioner cannot be construed to be violating the 'public order'.

11. The Hon'ble Apex Court in the matter of District Collector, Ananthapur V/s. V. Laxmanna reported in 2005 DGLS (SC) 2745 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."

12. This Court has followed the above judgment in the matter of Nilesh Charandas Gaikwad V/s. State of Maharashtra and another decided on 27/06/2022 in Criminal Writ Petition No.804/2021 has observed as under:-

"4. The crimes which have been taken into consideration for reaching a conclusion for continuous activities of the petitioner prejudicial to the public order are Crime No.192 of 2021 registered under Sections 65(c)(d) and (f) and 83 of the Maharashtra Prohibition Act, 1949 and Crime No.250 of 2021 registered under Section 65(c) and (d) of the said Act at Police Station Babhulgaon. In both these crimes, the Chemical Analyzer's report is awaited and if that is so, as rightly submitted by the learned counsel for the petitioner, no conclusion about prima facie involvement of the petitioner in these crimes could be arrived at, and if that is so, no further conclusion regarding involvement of the petitioner in prejudicial activities could be arrived at. This is also the view taken by the Supreme Court in the case of District Collector Ananthapur and another v. V. Laxmanna, reported in 2005 ALL MR (Cri) 1800 (S.C.)."

13. The detention order considered the criminal history of petitioner of four earlier offences punishable under the Maharashtra Prohibition Act. No C.A. report is made available to the Detaining Authority in the recent crime which is considered while passing the detention order, the same is also not produced before this Court. The subjective satisfaction arrived at by the Detaining Authority for ordering the detention *sans* consideration of the aforesaid issue i.e. absence of report from Forensic Science Laboratory in the recently registered offence i.e. Crime No.325/2023.

14. The respondents have also relied on the confidential statements for passing the detention order.

On perusal of the statements it appears that the respondent No.2 has mechanically passed by the detention order as the statements were not even verified by the person who had recorded it. The respondent No.2 has mechanically signed the statements. The identical statements are made by both the witnesses and it is about general character of the petitioner. In

absence of C.A. report in the recently considered crime and the verification of the statements, it cannot be said that the Detaining Authority has rightly arrived at subjective satisfaction. Therefore, the detention order cannot be sustained. Hence we pass the following order:-

The petition is allowed in terms of prayer clause (ii).

The petitioner be set at liberty, forthwith, if not required in the any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)