



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

CRIMINAL WRIT PETITION NO.732/2024

Akash @ Chakan @ Golu Ajay
Motghare, aged about 30 Yrs.,
Occ. Labour, R/o Near Circus
Ground, Ramnagar, Wardha

... Petitioner

- Versus -

1. State of Maharashtra,
Through its Secretary, Home Department
(Special) Mantralaya, Mumbai.

2. District Collector, Wardha

... Respondents

Mr. Mir Nagman Ali, Advocate for the petitioner.
Mr. S.S Doifode, A.P.P. for respondent Nos.1 and 2.

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

DATE OF RESERVING THE JUDGMENT: 30.1.2025.

DATE OF PRONOUNCING THE JUDGMENT: 13.2.2025.

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

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

2. The petitioner/detenu, who is detained in furtherance of an order dated 10.7.2024 passed by respondent No.2/the District Collector, Wardha, has approached this Court praying for quashing and setting aside the said order and to release him forthwith. The petitioner has been detained by respondent No.2, who has confirmed the detention order dated 10.7.2024 by exercising powers conferred under sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981 (for short "MPDA Act") and directed him to be detained at Nagpur Central Prison, Nagpur. The petitioner was served with the grounds of detention on the very same day.

3. Two crimes have been relied upon, in particular, Crime No.402/2024 and Crime No.222/2024 while passing the detention order. Twelve earlier offences alleged to have been

committed by the detenu since 2022 to 2024 are also considered by the detaining authority. The petitioner has been shown as an under trial for two years. Both the above recent crimes considered for passing the detention order are registered under Section 65(e), 77(a) and 83 of the Maharashtra Prohibition Act, 1949.

Crime No.402/2024 was registered at Police Station Ramnagar, Distt. Wardha on 24.5.2024 while Crime No.222/2024 was registered at Police Station Sewagram, Distt. Wardha on 15.3.2024. Grounds of detention state about illegal smuggling and selling of foreign and country liquor in the area of jurisdiction of Police Stations Ramnagar, Sewagram, Sawangi (Meghe), Kharangana and adjoining areas of District Wardha.

4. The petitioner has assailed the detention order on various grounds, as set out in the petition, which are as under:-

(a) One of the grounds raised is that Chemical Analyzer report in Crime No.402/2024 is still awaited and thus, said crime could not have been relied upon for passing the detention order.

(b) Further, the offences at serial Nos.4 to 14 are old and stale and are relied on for passing the detention order and, therefore, subjective satisfaction of detaining authority is vitiated.

(c) Para No.10 of the detention order states that it is based on two offences and thereafter twelve earlier offences from 2022 to 2024 are also considered for passing the detention order which shows non-application of mind by the detaining authority.

5. Learned Advocate for the petitioner submits that the opinion of the Chief Medical Officer, General Hospital, Wardha is based on nine C.A. reports and C.A. reports of Crime Nos.478/2021, 724/2021, 347/2020, 229/2020 and 358/2018 are supplied to the Chief Medical Officer, General Hospital, Wardha for seeking his opinion. These crimes have not been taken into account while passing the order of detention. Thus, irrelevant and extraneous material is placed before respondent No.2 which is considered by the detaining authority. He further submitted that illegible copy of C.A. report in Crime No.478/2021 is provided to the detenu.

The learned Advocate for the petitioner further argued that the last offence was registered against the petitioner on 24.5.2024 and the detention order came to be passed on 10.7.2024, therefore, there is delay in passing the detention order. Hence he has prayed to allow the writ petition.

6. *Per contra*, learned A.P.P. strongly opposed the submissions made on behalf of the petitioner. Learned A.P.P contended that C.A. reports of earlier offences showing bootlegging activities of the detenu and percentage of ethyl alcohol was found dangerous to the public health and, therefore, considering this aspect, the detaining authority after being satisfied from the record, has passed the detention order.

Learned A.P.P invited our attention to the aspect that the documents annexed with this petition at page Nos.80 to 95 would show C.A. reports of various crimes, were sent along with letter dated 27.3.2023 to the Civil Surgeon, General Hospital, Wardha for getting his opinion about the effect of ethyl alcohol on human health. It is submitted that said letter was sent on

27.3.2023 and the rest of the offences considered are subsequent to it. It is pertinent to note that the petitioner has not commented on the report of the Civil Surgeon, Civil Hospital, Wardha dated 12.4.2023.

Learned A.P.P vehemently argued that the offences mentioned by the petitioner in his petition of which C.A. reports have been placed before the detaining authority, are relevant and submitted that C.A. reports of these crimes were placed before respondent No.2 considering the continuity of commission of offences of petitioner and the effect of consumption of alcohol on human health. He has placed reliance on the judgment in Criminal Writ Petition *No.1191/2020* (Machindra Dyanoba Jadhav V/s. The State of Maharashtra and others) of the Aurangabad Bench of this Court wherein it is held that the verification of the in-camera statements by the Sub-Divisional Police Officer is appreciated by the detaining authority with regards to its subjective satisfaction of the same. Moreover, circular dated 19.9.2002 of the Home Department shows that the

verification of S.D.P.O is sufficient to take action under the MPDA, Act.

Learned A.P.P submitted that on perusal of the confidential statements of witnesses “A” and “B” it is clear that the activities of the petitioner were causing danger to the maintenance of public order. It is further submitted that initially the proposal was for three offences of last six months, however, at the time of passing the detention order, offence at serial No3 i.e. Crime No.6/2024 having been of the period of more than six months, the detention order is based only on two offences i.e. Crime No.402/2024 and Crime No.222/2024. It is further submitted that it was clearly mentioned in the grounds of detention that if there was any objection with regard to copy of C.A. reports supplied to the detenu, he had a right to submit application for providing the said copies to him and no such application was received from the petitioner. Hence he has prayed to dismiss the petition.

7. Learned Advocate for the petitioner has took us through the record. On careful perusal of record, it appears that two offences i.e. Crime Nos.402/2024 and 222/2024 which are punishable under Sections 65(e), 77(a) and 83 of the Maharashtra Prohibition Act are considered while passing the detention order. Though it is specifically mentioned in para 10.1 of the detention order that above two offences are considered, in para 10.3 it is stated that all 12 offences within the period of two years are considered for passing the detention order and discussed in detail which itself vitiates the detention order passed by the detaining authority as the extraneous material and stale offences are considered by the detaining authority while passing the detention order.

8. Learned Advocate for the petitioner has relied on para 13 of the judgment passed by this Court in Hanuman Rajaram Mhatre V/s. Commissioner of Police reported in **2018 DGLS (Bom.) 1306** wherein it is observed as follows:-

“13.we are of the firm opinion that the subjective satisfaction formed by the Detaining Authority suffers from non-application of mind, as the same is formed by taking into consideration extraneous and irrelevant material and, therefore, it is vitiated. Since it is this subjective satisfaction formed by the Detaining Authority on which the edifice of the impugned order rests, resultantly the order of detention is also vitiated.”

In the present case Chemical Analyzer reports in earlier offences are considered along with two recent offences.

This Court in case of Suryakant @ Mukesh Laxman Dhotre V/s. The Commissioner of Police, Solapur and Ors. reported in **2018**

ALL MR (CRI) 2004 has observed in para 5 as under:-

“..... detaining authority has formed the subjective satisfaction on the basis of the report that is obtained from the Assistant Director of Regional Forensic Science Laboratory, Pune after sending the samples collected in all the aforesaid C.Rs. With the result, “sample contains ethyl alcohol in water.”

“..... the detaining authority has taken into consideration material which is not germane to the order of detention and we are in agreement with the learned counsel for the petitioner that the subjective satisfaction of the detaining authority stands vitiated on account of consideration of irrelevant and extraneous material.”

9. The legible copy of C.A. report is not provided to the petitioner which affects his right to represent. The petitioner has relied on the judgment of this Court in Hanuman Rajaram Mhatre (supra) in which it is observed that the detention order was assailed on the ground that copy of the document supplied to the detenu was illegible and was in Urdu language, which disabled him from making a representation to the detaining authority. The detaining authority took a stand that the said document was not taken into consideration by the detaining authority though it was placed before it. In this context, the Division Bench observed as follows :-

"10. In our opinion, this is an unsustainable position to be taken up by a detaining authority. In the first place, we would regard it as a duty on the part of the detaining authority to furnish copies of the documents to which he referred and on which he placed reliance, to the detenu in a language known to the detenu. This can be done only when the detenu is informed of the documents to which the detaining authority made a reference and upon which he placed reliance. In the grounds of detention, which have been served upon the detenu, it has not been mentioned by the detaining authority that there are the documents to which he made reference and on which he placed reliance. However, an equivocal statement is to be found in

Paragraph III of the grounds of detention, which is as follows:-

“.....”

10. Two confidential statements on which the detaining authority has relied, the contents therein do not show that they affect the public order.

11. Learned Advocate for the petitioner has relied on the judgment in case of Arjun S/o Ratan Gaikwad V/s. The State of Mahabharata and others (Criminal Appeal No.----/2024 arising out of SLP (Cri.) No.12516/2024) which reads as follows:-

“10. Insofar as the reliance on the statement of the two unnamed witnesses are concerned, the statements are identical in toto. What is stated is that the appellant is engaged in production of handcrafted liquor for the last few years. It is stated that due to these activities there have been various problems for the Government machinery. It is stated that due to the fear and terror created by the appellant nobody appears to raise complaint against him.

It is further stated that due to these activities of bootlegging the nearby residents have left their houses and shifted elsewhere. The first witness statement further states that on some day in the last month at

07:00 P.M., when the witness was returning from work towards his residence, the appellant met him near the Gram Panchayat Office and quarrelled with him and threatened by saying that if his liquor business was no more, he will not spare him. It is further stated that he had not filed a complaint with the police against the appellant herein due to fear.”

12. While considering the material as regards the recently registered two offences against the petitioner punishable under the provisions of the Maharashtra Prohibition Act, earlier offences within the period of two years ought not to have formed the basis for ordering detention. The subjective satisfaction recorded by the detaining authority for ordering detention *sans* consideration of the aforesaid issue. In this regard, reliance is placed on the judgment passed by this Court in Criminal Writ Petition No.464/2024 (Moreshwar Sudhakar Nighot V/s. State of Maharashtra and another) wherein this Court has placed reliance on paras 7 and 8 of the judgment of Hon’ble Apex Court in case of District Collector, Ananthapur V/s. V. Laxmnna reported in 2005 DGLS (SC) 274 which read as follows:-

"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."

13. Report of Chemical Analyzer for bringing home the guilt of the accused is necessary for proving the offence under the Maharashtra Prohibition Act. Two offences i.e. No.402/2024 and Crime No.222/2024 which are considered, in Crime No.402/2024 C.A. report is not received and also not placed on record though C.A. reports in earlier offences are considered. In absence of C.A. report in Crime No.402/2024 it cannot be presumed or cannot be said to have provided basis for recording subjective satisfaction so as to infer that a strong case exists against the accused like the petitioner. To prove disturbance of the health of public the reports of chemical analyser are important. The report of chemical analyser in one offence is not sufficient to pass the detention order. We are also convinced that the authority has not taken into consideration the acquittal in one of the cases in an earlier offence. As the chemical analyser report is not available in one of the offences, it is sufficient to set aside the order of detention. Hence we pass the following order:-

The petition is allowed.

The impugned detention order dated 10.7.2024 is quashed and set aside.

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

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)