



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

CRIMINAL WRIT PETITION NO.811/2024

Sunil @ Golu S/o Madhukarrao
Nandeshwar, aged about 35 years,
Occ. Pvt. Work, R/o Panchshil Chowk,
Fail Talav, Yavatmal, Distt. Yavatmal
(Presently District Prison, Washim) ... Petitioner

- Versus -

1. State of Maharashtra,
Through Government of Maharashtra,
Home Department (Special),
Second Floor, Main Building,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai-400032.
2. The District Magistrate,
Yavatmal, Distt. Yavatmal.
3. Superintendent of District Prison
Washim, Distt. Washim ... Respondents

Mr. A.K. Bhangde, Advocate for the petitioner.
Mr. I.J. Damle, A.P.P. for respondent Nos.1 to 3/State.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF CLOSING THE JUDGMENT: 15.1.2025.
DATE OF PRONOUNCING THE JUDGMENT: 5.2.2025.

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

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

2. This writ petition challenges the order dated 6.6.2024 passed by the District Magistrate, Yavatmal under Section 3(2) 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 (for short “MPDA Act”) which was further confirmed by respondent No.1 on 23.7.2024 under Section 12(1) of the MPDA Act thereby detaining the petitioner for a period of twelve months in order to prevent him from indulging in the activities of bootlegging.

3. The detaining authority has considered six offences registered against the petitioner under Section 65(D) and 65(E) of the Maharashtra Prohibition Act.

4. Several grounds are raised in the petition including the ground that the in-camera statements of anonymous witnesses

“A” and “B” were recorded on 20.4.2024 and 22.4.2024 respectively which were verified on 2.5.2024 and it is submitted that respondent no.2 has not made specific endorsement that the said witnesses were not willing to produce evidence before the Court of law due to fear. It is also submitted that there was no nexus with the last prejudicial activity of the petitioner allegedly committed on 26.3.2024 and the order of detention passed on 6.6.2024 as there was a delay of about two months. It is also submitted that the copy of bail applications and orders were not supplied to the detenu.

5. The basis on which the impugned detention is passed are the following six crimes registered against the petitioner:-

(a) Crime No.38/2024 dated 20.1.2024 for the offence punishable under Section 65(D) of the Maharashtra Prohibition Act registered at Police Station, Yavatmal City.

(b) Crime No.252/2024 dated 20.2.2024 for the offence punishable under Section 65(D) of the Maharashtra Prohibition Act registered at Police Station, Yavatmal City.

(c) Crime No.291/2024 dated 2.3.2024 for the offence punishable under Section 65(E) of the Maharashtra Prohibition Act registered at Police Station, Yavatmal City.

(d) Crime No.303/2024 dated 7.3.2024 for the offence punishable under Section 65(E) of the Maharashtra Prohibition Act registered at Police Station, Yavatmal City.

(e) Crime No.325/2024 dated 12.3.2024 for the offence punishable under Section 65(D) of the Maharashtra Prohibition Act registered at Police Station, Yavatmal City.

(f) Crime No.352/2024 dated 26.3.2024 for the offence punishable under Section 65(D) of the Maharashtra Prohibition Act registered at Police Station, Yavatmal City.

6. Insofar as all the six crimes are concerned, they are pertaining to the illicit manufacture of handmade liquor. In none of the crimes, the petitioner was arrested. It is stated that petitioner has given life threats to the unnamed witnesses. It is further stated that as a result of the bootlegging activities, the nearby residents are feeling very insecure due to the presence of

the detenu. It is further stated that both the witnesses have not raised complaint with the police against the petitioner.

7. Mr. Bhangde, learned Advocate for the petitioner submits that neither the narration of facts registered against the petitioner nor the confidential statements of witnesses *per se*, justify inference that the acts and conduct attributed to the detenu had the propensity to cause prejudice to the maintenance of public order.

8. Learned Advocate for the petitioner specifically submitted that for prosecuting under the Maharashtra Prohibition Act, 1949 expert opinion is required to show that alleged liquor is injurious and bad to the health of public. He further stated that details furnished by detaining authority while narrating statements of witnesses had not disclosed the same.

9. It is submitted by the learned Advocate for petitioner that subjective satisfaction arrived at by the detaining authority must be based on some criterion which could be

objectively noticed by the reviewing authority and as in the present case the same is not there, it can be safely said that the subjective satisfaction so reached by the detaining authority stands vitiated.

10. Mr. Damle, learned A.P.P. vehemently opposed the submission of petitioner, supplying emphasis on the affidavit-in-reply filed on behalf of the respondents. He submitted that the Sub-Divisional Police Officer, Sub Division Pandharkawada, Distt. Yavatmal had personally verified the in-camera statements on 2.5.2024. It is submitted that the District Superintendent of Police, Yavatmal submitted the proposal of detention by communication dated 13.5.2024 to the detaining authority. There had been a consultation and discussion between respondent No.2 and Police Inspector, Police Station, Yavatmal City. Hence after following due procedure and verification, the detention order has been passed.

11. Learned A.P.P. vehemently argued that the detaining authority is subjectively satisfied with the truthfulness and

genuineness of statements made by witnesses “A” and “B” and pressed upon the fact that it made an endorsement on said statements on 31.5.2024. It is the contention of learned A.P.P. that the proposed detenu had been continuously engaging himself into the commission of bootlegging activities, causing harm and threat to public at large and the residents of nearby areas in the vicinity. It is further submitted by learned A.P.P. that the copy of the report of medical officer dated 5.3.2024 is provided to the petitioner along with documents in the said report which mentioned that liquor/ethyl alcohol has adverse effect on human beings.

12. Heard learned Advocate for the petitioner and learned A.P.P. for the respondents and perused the record.

13. Admittedly, in all the offences report of Chemical Analyzer is not produced before the detaining authority.

14. Learned Advocate for the petitioner has submitted the detailed chronology of events. From the documents, which

are filed on record, it appears that the opinion of Doctor and the Chemical Analyzer Reports are filed on record. On perusal of said reports, it appears that they are of the earlier offences and not the offences which are considered by the detaining authority while passing the detention order. Said reports are neither part of the detention order nor part of the detention proposal for considering the offences within six months. Therefore, said Chemical Analyzer Reports are of no use. In absence of the Chemical Analyzer Reports and the opinion of Doctor, authority has opined that the consumption of material which was seized from the detenu is harmful to the persons who may consume the same. In such an eventuality, we are of the view that the offences which are relied upon by the detaining authority cannot be said to have substantiated the Chemical Analyzer Reports to arrive at subjective satisfaction holding that the petitioner's activities are dangerous.

15. Learned Advocate for the petitioner has relied on the judgment of this Court in Criminal Writ Petition No.559/2024

(Rafik Sheku Bhagatwale V/s. The District Magistrate, Washim and another) wherein this Court has placed reliance on para 7 of the judgment in Criminal Writ Petition No.78/2022 (Chattu S/o Ramjan Naurangabadi V/s. State of Maharashtra and others) which reads as follows:-

“7. Then, although eight crimes have been registered against the petitioner and all of them have been considered as constituting relevant material for reaching subjective satisfaction, we find that at least in three of them, no cognizance could have been taken for want of report of chemical analysis indicating that what was seized from the petitioner was prohibited liquor. CA reports in these crimes are still awaited. So, the offences which ought not to have been considered by the detaining authority have been considered for reaching the subjective satisfaction. For this reason also the impugned order suffers from the vice of non-consideration of relevant material. We thus find great substance in the petition.”

Same is the situation in case in hand.

16. Insofar as the reliance on the statement of two confidential witnesses “A” and “B” is concerned, the statements are identical. The witnesses have stated that the petitioner is engaged in production of country liquor for the last few years.

Due to his illegal activities, the residents of the area were facing several problems. Due to terror created by the petitioner nobody was ready to lodge a complaint against him.

Witness "A" stated that when he tried to make the petitioner understand, the petitioner threatened to kill him.

Witness "B" has also given statement on the same lines.

The allegations are vague and identical. The statements which are stereotyped, even if taken on its face value, would show that the threats given to the said witnesses are between the petitioner and the said witnesses.

On perusal of the said statements it appears that the detaining authority has not even seen the statements. It is verified by the Sub-Divisional Officer, Yavatmal but not even seen by the detaining authority. In that view of the matter, we do not find that the subjective satisfaction arrived at by the detaining authority holding that the activities of the petitioner were prejudicial to the maintenance of public order, is substantiated.

17. Though the petitioner has raised many grounds considering the grounds that the Chemical Analyzer Reports are not filed on record of the offences which were considered while passing the detention order and there is no subjective satisfaction about the truthfulness of the identical statements which were recorded and verified by the Sub-Divisional Police Officer, are not sufficient to pass the detention order. That being so, we are of the view that the impugned detention order dated 6.6.2024 is not sustainable and is liable to be quashed and set aside.

18. The petition stands allowed in terms of prayer clause (i).

The petitioner be released forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)