



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

CRIMINAL WRIT PETITION NO.937/2024

Santosh S/o Bhimrao Parise
Age 33 years, R/o. Ward No.3,
Abaji Ward, Bazar Chouk, Virul,
Tah. Arvi, Distt. Wardha

... Petitioner

- Versus -

1. The State of Maharashtra
Through its Principal Secretary, Home
Department, Mantralaya, Mumbai-32.
2. The District Magistrate and Collector,
Wardha, District-Wardha.
3. The State of Maharashtra through P.S.O.
Pulgaon, Wardha, Distt. Wardha.

... Respondents

Mr. Mahesh V. Rai, Advocate for the petitioner.
Ms. S.S. Jachak, A.P.P. for respondents/State.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 27.3.2025.
DATE OF PRONOUNCING THE JUDGMENT: 8.4.2025.

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 being aggrieved by the order dated 24.06.2024 passed by the respondent No.2- the District Magistrate, Wardha and confirmed by the respondent No.1 on 07.08.2024 under Section 12(1) 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 (hereinafter referred to as ("M.P.D.A. Act")) directing that the petitioner shall be detained for a period of twelve months from the date of detention has preferred this writ petition.

3. The proposal for detention prepared by respondent No.3 constituted of seventeen offences registered against the petitioner from the year 2022 to 2024. All these offences along with two in-camera statements have been taken into account for the purpose of passing the order of detention.

4. Following four recent offences committed within last six months have been relied upon by the detaining authority:-

- (i) Crime No.323/2024 punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered on 04.04.2024 at Police Station, Pulgaon, Distt. Wardha.
- (ii) Crime No.177/2024 punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered on 22.02.2024 at Police Station, Pulgaon, Distt. Wardha.
- (iii) Crime No.56/2024 punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered on 24.01.2024 at Police Station, Pulgaon, Distt. Wardha.
- (iv) Crime No.1049/2023 registered under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered on 30.12.2023 at Police Station, Pulgaon, Distt. Wardha

In all the aforementioned four crimes, the petitioner has been released on notice under Section 41(1)(A) of the Code of Criminal Procedure, 1973. In many of the earlier offences, the Chemical Analyzer's report is available while in some of them the copies of the C.A. Reports are not legible. In Crime No.177/2024, Crime No.56/2024 and Crime No.1049/2023, the C.A. reports are made available which contain 40.90%, 23.67%, 18.91 % v/v of

ethyl alcohol respectively. In Crime No.193/2023 too C.A. report is there.

5. In Crime No.323/2024, 20 litres of Gavathi Moha liquor worth Rs. 2200/- was seized. In Crime No.177/2024, 20 litres of Gavathi Moha liquor worth Rs. 3200/- was seized. In Crime No.56/2024, 12 litres of Gavathi Moha liquor worth Rs. 2000/- was seized. In Crime No.1049/2023, 30 litres of Gavathi Moha liquor worth Rs.4800/- was seized.

6. Mr. Rai, the learned Advocate for the petitioner, submitted that there are no bail orders on record to support the subjective satisfaction reached by the detaining authority that the petitioner has violated the conditions of bail orders even after executing the bail bonds and that he again committed the offences. It is the submission of the learned Advocate that the incident narrated in the in-camera statement of witness "A" which occurred on the eve of *Holi* indicates personal dispute which does not breach the public order. The second incident refers to the quarrel between the customer of the detenu who was under the

influence of alcohol and the witness, which was not concerned with the bootlegging activities of the petitioner. He has further argued that the last criminal activity took place on 04.04.2024 and the detention order was passed on 24.06.2024. i.e. after a period of about eighty two days from the date of last crime and thus, there is no live link requiring the detention of the petitioner.

7. Learned A.P.P. Ms. Jachak vehemently opposed the contentions of the petitioner relying upon the affidavit-in-reply placed on record. Learned A.P.P. on the aspect of issuance of notice under Section 41-A of the Code of Criminal Procedure, 1973 has relied on the decision of this Hon'ble Court (Aurangabad Bench) in Criminal Writ Petition No.1533/2023 (Hirabai Kondiba Kale Vs. The State of Maharashtra and others). She also stated that the technical time in forwarding the proposal which was initially dated 09.05.2024 along with recommendation of the Sub-Divisional Police Officer, Pulgaon, Wardha dated 14.05.2024 and thereafter the recommendation of the Superintendent of Police dated 10.06.2024 received by the

detaining authority on the same day cannot be referred to as delay in passing the detention order. With respect to bail orders not having been placed on record, learned A.P.P. submitted that with this petition there are bail bonds annexed. Even after getting bail, the detenu was continuously seen involving in bootlegging activities and he has created terror in the vicinity and disturbed the public order. The respondent No.2 has also placed reliance on the case of Machindra Dyanoba Jadhav Vs. The State of Maharashtra and Others in Writ Petition No.1191/2020 of this Hon'ble Court (Aurangabad Bench) on the question of personal verification of statements by the detaining authority.

8. It is the contention of the learned A.P.P. that the statements of two confidential witnesses should not be identical and common. The statement should only reflect criminal act and danger to the society at large at the hands of the petitioner and the same is reflecting from the statements of the witnesses "A" and "B". In both the in-camera statements, the activities of the petitioner are showing separate criminal behaviour of the

petitioner. Therefore, the order of detention is not only passed on the basis of in-camera statements but also on the overall record of the petitioner which was taken into account while passing the detention order along with the statements of witnesses. The petitioner is a habitual bootlegger and was found acting in a manner prejudicial to the maintenance of public order.

9. On perusal of the order passed by the detaining authority, it appears that 17 offences are considered for passing the detention order. Though it is mentioned in para 10 that four offences are considered for passing the detention order, again in para 10.5, 13 offences are taken into consideration of last three years for pointing out the bootlegging activities of the petitioner. All the offences are under Section 65(e) of the Maharashtra Prohibition Act. In all the offences C.A. Reports are available and ethyl alcohol in different quantities are found. The opinion of Medical Officer is also available along with the record which shows that the liquor containing ethyl alcohol is injurious to health which affects the pancreas, nervous system and cause other

ailments. In this case the C.A. Reports in all the crimes are available and the opinion is also available, however, it appears that the detaining authority has considered the offences during the period of three years which are stale offences. It requires live link between the offences and the order of detention.

10. The Hon'ble Apex Court in Khaja Bilal Ahmed V/s. State of Telangana reported in (2020) 13 SCC 632 has held that it is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future. The detaining authority has considered the crimes of 3 years which have no bearing on the detenu engaging in prejudicial activities.

11. While passing the detention order the detaining authority has mentioned in para 16 that the bail orders are considered and it is also specifically stated that the petitioner has violated the bail conditions even after executing the bail bonds.

12. Learned Advocate for the petitioner has relied only on this ground stating that there is no subjective satisfaction and without applying its mind, the detaining authority has passed the detention order.

13. The offences which are considered for passing the detention order are under the Prohibition Act, the punishment for which is 7 years and, therefore, as per the guidelines of the Hon'ble Apex Court in Arnesh Kumar V/s State of Bihar reported in (2014) 8 SCC 273 notice under Section 41(1)(A) of the Code of Criminal Procedure was issued in all the offences. Therefore, there is no question of consideration of any bail order as the petitioner was not arrested.

14. Though the learned A.P.P. has pointed out that the bail bonds were cancelled because of the activities of the petitioner and it is mentioned by the detaining authority about the bail bonds and not about bail orders, from the language of the detention order it is very clear that the bail orders passed in the

above referred crimes are considered. The stale offences are considered by the detaining authority and there is no subjective satisfaction arrived at by the detaining authority.

15. For the aforesaid reasons, the detention order passed by the detaining authority is required to be quashed and set aside. Accordingly it is quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other crime. The writ petition is allowed in the above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)