



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

CRIMINAL WRIT PETITION NO. 595 OF 2024

Mukesh Siddharth Gavai
Aged about 40 years, Occ.-Labour,
R/o Dhanaj Bk, Tah. Karanja, Washim ... **PETITIONER**

...VERSUS...

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

2. District Collector, Washim ... **RESPONDENTS**

Mr. M. N. Ali, Advocate for the Petitioner.
Mr. S. S. Doifode, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 29.01.2025
JUDGMENT PRONOUNCED ON : 07.02.2025

JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. The petitioner has preferred this petition questioning the preventive detention order passed against the detenu on 23.04.2024 by the District Collector, Washim, in exercise of the powers under Section 3(1) 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, ('MPDA Act' for short). The order of detention is based on two crimes, i.e., Crime No.389/2023 and Crime No. 76/2024 and two in-camera statements of witnesses "A" and "B". There is a mention of six criminal cases in the proposal of detention.

3. The order of detention relies upon the bootlegging activities of the petitioner. The two accountable offences as stated above are registered under Section 65(e) of the Maharashtra Prohibition Act, 1949, of which, Crime No. 389/2023 is pending before the concerned Court and Crime No.76/2024 is under police investigation.

4. In Crime No. 389/2023, on the complaint of Gajanan War, Head Constable, Police Station, Dhanaj, Washim, dated 06.12.2023, on the receipt of secret information, at the time of patrolling, the police raided a place near old Government Hospital, where the detenu was found selling handmade liquor (Taddi). The seized sample of liquor was sent to the Forensic Laboratory, Amravati. A report was received that, said sample had 41.83% of ethyl alcohol. A notice was issued to the petitioner under Section 41A(1) of the Code of Criminal Procedure.

On a similar note, in Crime No. 76/24, it is mentioned in para No. 5.2 of the grounds of detention that as per the opinion of the District Civil Surgeon, Washim, the contraband sample of liquor was detected with ethyl alcohol in water.

As far as the in-camera statements are concerned, petitioner and his associates beat witness “A”, due to a quarrel which took place between them over people urinating at public places after consuming alcohol, which was illegally sold by the petitioner. Furthermore, they also threatened witness “B” to not give the information of detenu being involved in illegal sell and transport of handmade liquor to the police.

5. Learned Counsel for the petitioner has raised a number of grounds. The first ground raised is, perusal of Crime No. 389/2023 would show that, it is registered against one Mangesh Siddharth Gavai and not the petitioner. It is an old offence as well.

6. The second ground taken up was that, perusal of the Crime No. 76/2024 would reveal that, there was no C.A. report received, thus, instant crime could not have been considered for passing the detention order.

Further grounds include that, there was no proper verification of in-camera statements as well as bail orders and applications with respect to other crimes were not placed before the detaining authority.

7. Learned Counsel for the petitioner submitted that, the allegations made in the crimes do not have nexus with the breach of public order. Further, it was submitted that, the C.A. reports which were submitted does not state that the quantity of ethyl alcohol was dangerous for human

consumption. He further submitted that, there was no endorsement on the in-camera statements by the detaining authority. Hence, no subjective satisfaction was reached by the detaining authority.

8. Learned A.P.P Mr. Doifode, while relying upon the affidavit-in-reply, vehemently opposed the submissions of the petitioner. He submitted that, the answering respondent has verified and reached to the subjective satisfaction about the truthfulness of the in-camera statements after having an interaction with the Police Station Officer, Dhanaj, Tah- Karanja, and Sub-Divisional Police Officer, Karanja.

9. The Learned A.P.P has further submitted that, upon consideration of the C.A. report by the District Civil Surgeon, Washim, it was stated that, ethyl alcohol is injurious to human body and consumption of the same in excess amount could cause death. Hence, prayed to dismiss the petition.

10. Heard both the learned Counsel.

11. The petitioner is detained as bootlegger. While passing the detention order, two offences are considered i.e. Crime Nos. 389/2023 and 76/2024. Though the two offences are considered, the C. A. report is received in one offence i.e. Crime No.389/2023. On perusal of the order, it appears that the C. A. reports in other offences are also considered by the detaining authority, which shows that the extraneous material is considered

by the detaining authority while passing the detention order. The learned Counsel for the petitioner has relied on the judgment of this Court in the case of ***Suryakant @ Mukesh Laxman Dhotre Vs. The Commissioner of Police, Solapur and Ors.*** reported in ***2018 ALL MR (Cri) 2004***, where it is held in para No.5 as under :

“.....the 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”.

“.....It is further held that, 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.”

12. The name of the petitioner is wrongly mentioned in Crime No.76/2024, where the C.A. report is not received. On the basis of one crime and one C.A. report, the detaining authority has passed the detention order. The two confidential statements which are considered by the detaining authority are identical. A general statement is made by the witnesses against the petitioner. In the statement of witness ‘A’ he asked the customer not to urinate on road, at that time, the petitioner quarreled with the witness and gave threats to him. In another statement of witness “B”, the petitioner had suspected that the witness had informed about his business to the police and therefore, he gave threats. The detaining authority has only seen the statements, which is not sufficient to pass the

detention order, therefore, the order passed by the detaining authority is vitiated. In the recent judgment of the Hon'ble Apex Court in the case of ***Arjun S/o. Ratan Gaikwad Vs. The State of Maharashtra and Ors.*** decided on 11.12.2024, wherein the Hon'ble Apex Court has observed that the general or identical statements given by the witnesses do not create public disturbance. Therefore, the statements and the crimes considered by the detaining authority are not sufficient to pass the detention order. Hence, the order passed by the detaining authority is required to be set aside.

13. For the aforesaid reason, the petition deserves to be allowed.

14. We hereby quash and set aside the detention order dated 23.04.2024 passed by the respondent No.2.

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

16. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)