



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

CRIMINAL WRIT PETITION NO. 719 OF 2024

Sunil Gopichand Mehune,
Aged about 39 years, Occ- Labour,
R/o Ward No.2, Wadgaon Kurd,
Tah. Seloo, Wardha.

... **PETITIONER**

...VERSUS...

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

2. District Collector, Wardha.

... **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.
DATE : 04.02.2025

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/detenu has challenged the order of detention, bearing No./A.K.Home/Desk-2(B) WS/875/2024 dated 26.06.2024, issued by the District Collector, Wardha for his detention under the provisions 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).

3. A proposal letter of detention dated 04.06.2024 was sent to the respondent No.2 by Inspector, State Excise, Flying Squad, Wardha, through Superintendent of Police, Wardha, in pursuance of the detenu continuously indulging into bootlegging activities. Since 2015 to 2024, there are twenty two offences registered against the petitioner, while in the last four years, five crimes have been filed against him. The detention order is based on offences registered in the last six months against the petitioner and the recent Crime, bearing No.132/2024, under Section 65(e) of the Maharashtra Prohibition Act, 1949 was relied upon while passing the said order.

4. Other crimes include:- (a) Crime No.263/2023 dated 24.11.2023 registered for the offences under Section 65(e) of the Maharashtra Prohibition Act, 1949, (b) Crime No.48/2023 dated 19.04.2023 registered for the offences under Section 65(e) of the Maharashtra Prohibition Act, 1949, (c) Crime No.48/2022 dated 17.06.2022 registered for the offences under Section 65(e) of the Maharashtra Prohibition Act, 1949, (d) Crime No.51/2021 dated 13.05.2021 registered for the offences under Section 65(e) of the Maharashtra Prohibition Act, 1949, (e) Crime No.19/2020 dated 07.02.2020 registered for the offences under Section 65(e) of the Maharashtra Prohibition Act, 1949. All the offences are registered at the State Excise Department, Wardha. Though, Chemical Analyzer's reports' (C.A. report) of other crimes are annexed herewith, the necessary

documents, C.A. report of the Crime No.132/2024, one which is relied upon, could not be found upon perusal of the record. The liquor sample of the said crime was sent for analysis on 29.05.2024. The crimes pertain to stocking, selling and smuggling liquor from other places of the district to prohibited areas of Wadgaon (Khurd), Tahsil- Seloo, District Wardha. It is pertinent to note that, Wardha is declared as a liquor free district by the Government of Maharashtra. Upon perusal of the impugned detention order, it appears that in Crime Nos. 132/2024 and 263/2023, the petitioner has been released after the service of notice under Section 41A(1) of the Criminal Procedure Code to him, while in Crime No.51/2021 and Crime No.19/2020, the detenu has been released vide bail orders, upon depositing PR bonds. Moreover, in the in-camera statements of witnesses “A” and “B”, mere threats of causing grievous hurt have been given by the petitioner.

5. A number of grounds have been raised by the petitioner in this petition. Major grounds are as under :

- (i) C.A. report is awaited in Crime No.132/2024, therefore, same should not have been considered for passing the order of detention. Further, illegible copies of C.A. report of other crimes have been provided with no translation.
- (ii) The crimes mentioned in para No.4 at Serial No. 2 of the grounds of detention are old offences having no live link with the order of detention.

(iii) The in-camera statements of witnesses “A” and “B” do not make out a case of disturbance of public order.

6. Learned Counsel for the petitioner, Mr. Ali submitted that the detaining authority did not consider the fact that petitioner was already acquitted in S.C.C.No. 619/2020. He further submitted that, the requisition dated 18.03.2024 does not refer to the C.A. reports against the petitioner. He further submitted that the verifying authority never visited the spot and verified the truthfulness of in-camera statements and that there is no endorsement on the statements. He stated that, the detenu has not been supplied with proper translation of documents and, therefore, it has affected his right of making an effective representation. He further stated that, there is no averment in the impugned order that the detaining authority had discussed with the verifying authority and the witnesses to be subjectively satisfied about the truthfulness of in-camera statements.

7. Learned A.P.P. Mr. Doifode, relied upon the authority cited in *Smt. Gobibai V. Ghanavat vs. State of Maharashtra & Others [Criminal Writ Petition No. 1016 of 2002]*, by referring the case in the matter of *Sakharam Patil vs. Commissioner of Police [Criminal Writ Petition No. 119 of 1983]*, has held that, it is not the law that for passing an order of preventive detention against a bootlegger the C. A. report is a must. In the same citation, it was also held that, matter could be considered in the light of the

other material relied on by the authorities which could establish the bootlegging practice of the detenu.

8. Heard both the learned Counsel.

9. The detaining authority has relied on one offence which is Crime No.132/2024 registered for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. The petitioner is detained as a bootlegger. Though, one offence is considered for passing the detention order, as per ground No.6.1, the other five offences from four to five years are also considered for passing the detention order which clearly shows that the extraneous material is considered by the detaining authority while passing the detention order, which is not permissible. Though the accused/petitioner is detained as a bootlegger, the C.A. report is not filed on record of the offence which is considered for passing the detention order. Without C.A. report, the order for detention cannot be passed.

10. In the case of ***Suryakant @ Mukesh Laxman Dhotre Vs. The Commissioner of Police, Solapur and Ors.*** reported in ***2018 ALL MR (Cri) 2004***, it is observed by the Hon'ble Apex Court 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.’

11. It appears that the statements of the confidential witnesses, which are relied by the detaining authority are identical. It is not only identical, it has been copied and pasted as it is. A general statement is made and the same incident is mentioned by both the witnesses. Only the dates are different. 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 has observed that in any case, the statements which were stereotypical even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to public order. In the case in hand, the witness “A” has stated about the business carried out by the petitioner i.e. Gavathi Hatbhatti liquor and on 27.04.2024 when he was walking towards his house, the petitioner had asked him to leave from there otherwise he will break his limbs and also asked him whether he is an informant to the police, so also told him that he is doing the said business since many years. Same incident is mentioned by the witness “B”.

12. In view of the observations of the Hon'ble Apex Court in the case of **Arjun Ratan Gaikwad** (*supra*), the statements are not helpful to pass the detention order as there is no C.A. report in this case. Without C.A. report, the detention order is passed. 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 26.06.2024 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.

17. Pending application(s), if any, stand(s) disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)