

(2023) 07 BOM CK 0065

In the Bombay High Court

Case No : Criminal Writ Petition No. 666 Of 2022

Anil Motiram Rathod

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 226
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 — Section 2(a), 3, 12
Maharashtra Prohibition Act, 1949 — Section 65(E), 93(b)
Code Of Criminal Procedure, 1973 — Section 110(e), 110(g)

Citation : (2023) 07 BOM CK 0065

Hon'ble Judges : Vinay Joshi, J;Valmiki Sa Menezes, J

Bench : Division Bench

Advocate : R. S. Kurekar, N. R. Rode

Final Decision : Dismissed

Judgement

Valmiki Sa Menezes, J

1. Heard Shri R. S. Kurekar, learned counsel for the petitioner and Shri N. R. Rode, learned Additional Public Prosecutor for respondent Nos.1 to 3.

2. By this petition, the writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked seeking relief of quashing and setting aside the detention order and committal order No.DESK-2/HA/HOME/WS-646/2022, dated 04/08/2022 passed by the respondent No.2 and to set aside the order dated 14/09/2022 passed by respondent No.1, confirming the order of respondent No.2. The impugned orders have been passed in terms of the provisions of Section 3 r/w Section 12 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 "the Act").

3. The facts as gathered from the statements made in the petition and the record produced therewith, which have led to the passing of the impugned orders and their challenge in the petition are as under :-

A] The petitioner was served with the impugned detention order dated 04/08/2022 issued under Section 3 of the Act on ground of detention which has been annexed to the order. The main ground for detention is that the petitioner is alleged to be a 'Bootlegger' in the village of Khirda, within the jurisdiction of Jaulka Police Station, Dist, Washim; it was further alleged in the grounds that as a habitual bootlegger, the petitioner has committed 11 offences from the year 2017 to the year 2022 under Section (3) of the Maharashtra Prohibition Act, 1949, for which FIRs were registered and investigation was completed and Reports were filed in the concerned Court at least 9 of these cases, which were pending trial before the concerned Magistrates. Of the eleven cases registered of bootlegging, two were pending investigation pertaining to the year 2022.

B] The further grounds for detention state that preventive action was also initiated against the petitioner in the year 2021, the first being under the provisions of Section 93(b) of the Maharashtra Prohibition Act, 1949 and the second being proceeding under Section 110 (e) and (g) of the Code of Criminal Procedure, in which interim bonds of good behavior respectively for the period of one and two years were taken from the petitioner, who had thereafter committed breach of these bonds.

C] That two offences have been committed by the petitioner under Section 65(E) of the Maharashtra Prohibition Act, 1949 in the year 2022 in which confidential statements have been taken from witness 'A' and from witness 'B', both of whom have alleged that they had fear of deposing against the petitioner, hence giving confidential statements; that confidential statement of witness 'A' discloses that the petitioner was selling "Gawathi Hatta Bhati Daru" (country liquor) resulting in many people getting addicted to drinking liquor and beating their wives, thus destroying families; witness 'A' further stated that he was also threatened by the petitioner, when on his way home, when the petitioner uttered foul language and threatened this witness by holding his collar and then beating him.

D] That witness 'B' has also a fear of deposing against the petitioner for facing a reprisal from him and has stated that the petitioner was manufacturing and selling "Gawathi Hatta Bhati Daru" (country liquor) resulting in causing alcohol addiction amongst villagers. Witness 'B' has also stated that on 17th May, 2022 evening, when he was in his house, was threatened by the petitioner.

E] Along with the detention order, the petitioner was served with documents on the basis of which the authority claimed to have arrived at its subjective satisfaction before passing the impugned order; the documents mainly consist of the FIRs and investigation papers forming part of the report filed before the concerned Magistrate. Amongst these documents, all of which were relied upon to substantiate the allegation that the petitioner was a habitual bootlegger, were

several reports of the Regional Forensic Science Laboratory, reporting that the samples taken from the confiscated material were in possession of the petitioner under various FIRs, contain at least 14 % V/V of Ethyl alcohol in water.

F] After the detention order was passed, the petitioner was immediately detained in prison on 04/08/2022 till date. Thereafter, the opinion of the Advisory Board was sought, which recommended the detention of the petitioner, which was then considered by the respondent No.1, which has confirmed the detention order on 14/09/2022 for a period of 12 months from the date of detention.

4. The main grounds on which the petitioner seeks to challenge the order of detention and confirmation are as under :-

A] That the impugned order of confirmation has been passed without any hearing being given to the petitioner; even the order of detention dated 04/08/2022 has been passed without giving the petitioner an opportunity to file his reply and be given hearing and therefore, both orders are passed in contravention of the principles of natural justice. The petitioner claims that even a copy of the order passed by respondent No.1 was not furnished to him, thus, the authorities have acted in violation of petitioner's fundamental rights.

B] That an order of detention essentially impinges upon the citizens' fundamental right of freedom of movement under Articles 21 and 22 of the Constitution of India, as they suspend the petitioner's personal liberty, and such detention order cannot be issued without granting the petitioner an opportunity of being heard and dealing with the material on record; the impugned orders are, therefore, arbitrary.

C] The impugned orders are arbitrary since the subjective satisfaction recorded by the authority is not based upon any material, which could be considered sufficient to justify denial of the petitioner's personal liberty; moreover, the in-camera statements of the witnesses 'A' and 'B', relied upon the detaining authority were neither verified statements nor contained material that could be termed to be such that would disrupt public order; further, that the statements do not disclose any offence, which could be termed as one where the petitioners act would be of the nature that would disrupt public order or fall within the provisions of Section 2(a) i.e. acting in any manner prejudicial to the maintenance of public order.

D] That in any event, all the other offences being allegedly committed under Section 65(e) of the Maharashtra Prohibition Act would be conveniently dealt with by the concerned Magistrate, who is seized of the cases, which are pending trial, no cause has been made out for the detention of the petitioner.

5. The respondents have chosen not to file any affidavit-in-reply and not traversed the specific averments made in the petition that the petitioner was neither served with a copy of the order of confirmation nor was heard or given an opportunity of hearing, to meet the allegations and grounds to the detention

order, prior to same being confirmed.

6. Section 3 of the Act requires the authority to record its subjective satisfaction on a material before it as to the reason why it was necessary to detain the petitioner to prevent him from acting in any manner prejudicial to the maintenance of public order. Such order shall be reported to the State Government together with the grounds which formed the opinion of the authority, and the order of detention will remain in force for 12 days thereafter unless, in the meantime, is approved by the State Government.

In the present case, it is clear from the record that the order of detention was confirmed only on 14/09/2022 and then not informed to the petitioner. There is also nothing brought before us to demonstrate that the order dated 14/09/2022 which would be in operation only for 12 days thereafter was communicated to the respondent No.2 within that period and the opinion of the Advisory Board was sought within a reasonable time. There is, thus no compliance with the provisions of Section 3 on the face of it in terms of the timelines set down therein.

7. We also note that from the record it appears, and so also, from a plain reading of the order dated 14/09/2022, that the petitioner was neither heard nor his representation was considered before passing of the confirmation order. We must presume so since the confirmation order makes no reference to any representation or reply that the petitioner may have filed or that may have been considered by the Advisory Board. In our opinion that the order dated 14/09/2022 confirming the detention order is passed without hearing the petitioner or considering any representation or reply that could have been given by him.

8. The subjective satisfaction to be arrived at by the authority under Section 3 of the Act, would have to be based upon material placed before it. The two in-camera witnesses no doubt record the fear of the witnesses deposed against the petitioner, but neither the statements can be said to record any act by the petitioner that would cause a disruption of public order, at most, the acts stated to have been committed by the petitioner therein, would be, if proved, offences personally against the complainant and not such that would cause alarm or disruption of public life in the locality. In fact, they are more in the nature of altercations between the petitioner and individuals, rather than acts done in a public place, seen by a community at large, which would cause alarm. In our opinion, the statement of these witnesses would certainly not be claimed to be material, which would form the basis for arriving at a subjective opinion in terms of Section 3 of the Act to state that the activity complained of was one which would be prejudicial to the maintenance of public order.

9. We take note of all other offences numbering 11 which are registered under the Maharashtra Prohibition Act and 9 out of those are pending trial before a Court. Suffice to state that for the purpose of the Act, wherein 'Bootlegger' has

been defined to mean a person to distill, manufacture, store or transport or sell liquor in contravention of the Prohibition Act, the question would have to be answered by the authority itself in the impugned order. Though the authority concludes that the petitioner is a bootlegger under the Act, considering that the petition would succeed on first two grounds, which we have referred to in the abovementioned paragraphs, we deem it unnecessary to examine this issue.

10. For the reasons stated above, we are of the opinion that the impugned orders dated 04/08/2022 and 14/09/2022 cannot be sustained and are hereby quashed and set aside.

11. Rule is made absolute in terms of Prayer Clauses (i) and (i-a) of the petition. No order as to costs.