
(2018) 07 BOM CK 0107

In the Bombay High Court

Case No : Criminal Writ Petition No.244 Of 2018

Dinesh s/o. Nimba Gaikawad

APPELLANT

Vs

State of Maharashtra And Ors.

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304, 323, 328, 332, 337, 353, 392, 420
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(b), 2(b)(1), 3(1),
3(2), 9, 10, 11(1)
Bombay Prohibition Act, 1949 — Section

Citation : (2018) 07 BOM CK 0107

Hon'ble Judges : S.S.SHINDE, J;V.K.JADHAV, J

Bench : Division Bench

Advocate : Satej S.Jadhav, K.S.Hoke

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Writ Petition is filed praying therein to quash and set aside the order of detention dated 31st October, 2017, passed by the District Magistrate,

Dhule, and also the order of confirmation dated 7thth December, 2017, passed by the Section Officer to the Government of Maharashtra, Home

Department [Special].

3. Brief facts as disclosed in the Petition are as under:

4. It is the case of the Petitioner that on 4th October, 2017, the Sub Divisional Police Officer, Dhule [Rural], Sub Division Sakri forwarded a proposal

to the Superintendent of Police, Dhule in respect of detention of the Petitioner

under the provisions 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 "the Act of 1981"]. On 5th October, 2017, the Superintendent of Police, Dhule forwarded the

said proposal to the District Magistrate, Dhule along with recommendation of detention of the Petitioner. After perusal of the record, the District

Magistrate has come to the conclusion that the Petitioner is required to be detained, and by order dated 31st October, 2017, the Petitioner has been

directed to be detained under the provisions of the Act of 1981. On the same day, the District Magistrate also passed the committal order in respect of

the detention of the Petitioner. The said reasoned Judgment of detention dated 31st October, 2017, passed by the District Magistrate, Dhule was also

communicated to the Petitioner. It appears from the record that the decision of the District Magistrate was referred to the Advisory Board and the

said Board has found sufficient cause for the detention of the Petitioner / detenu. Thereafter, by order dated 7th December, 2017, the Section

Officer to the Government of Maharashtra in its Home Department (Special), has directed the detention of the Petitioner / detenu for the period of

one year from the date of detention. Hence this Petition.

5. Learned counsel appearing for the Petitioner submits that the order passed by the District Magistrate, Dhule contravenes the legal provisions of

Section 3 [2] of the Act of 1981. The proviso of Section 3 [2] lays down that the order of detention of the District Magistrate has to be not more than

three months. The District Magistrate has not mentioned the exact period of detention as required by law. In support of his said submissions, learned

counsel appearing for the Petitioner placed reliance upon the exposition of law in the case of Commissioner of Police & another Vs. Gurbux

Anandram Bhiryani 1988 [Supp] SCC 568 , wherein it has been held that the exact period of detention has to be mentioned in the order by the authority

while passing the order of detention. Learned counsel further submits that though the Petitioner has been acquitted in Crime No.208 of 2013, the said

aspect has not been considered by the authorities while passing the detention order. Learned counsel further submits that three witnesses A, B and C

have mostly spoken about the character of the detenu. They have not given

specific dates or material particulars about the incidents. Learned

counsel further submits that the District Magistrate has no authority to pass the order of detention.Â Â Â Â

6. Learned counsel further submits that detention order is liable to be vitiated as there is delay in placing the order passed by the District Magistrate

before the Advisory Board for its approval. Considering the above circumstances, the preventive action against the Petitioner would be unwarranted.

The family of the Petitioner is dependent upon him and that the Petitioner is not a hardcore criminal. Learned counsel lastly submits that considering

the above facts, the impugned order of detention deserves to be quashed and set aside.

7. In support of the aforesaid submissions, learned counsel appearing for the Petitioner has placed reliance upon the ratio laid down in the cases of

Shri. Raja @ Rajesh Rajan Nair vs. Shri. R.S. Sharma, ExCommissioner of Police, Greater Bombay and others 2005 ALL M.R. (Cri) 1936, and Sunil s/o

Sadashiv Ghate vs.State of Maharashtra and others 2000 ALL M.R. (Cri) 1349.Â Â

8. As against this, learned A.P.P. appearing for the State relying upon the affidavit in reply filed on behalf of the State, submits that the Petitioner is

having criminal background which discloses that he has made storage of intoxicant spirit without holding any valid license in the village forest with the

help of accomplices and repeatedly committing the offence of manufacturing and packaging spurious liquor of reputed companies. It is submitted that

the Petitioner is also involved in manufacturing, transporting and selling spurious liquor at various places.Â The Petitioner has also committed offence

of robbery and also committed offence of illegal selling spurious foreign liquor at Chandrapur, Gadchiroli Districts. Â It is further submitted that on

30th December, 2015, Officers and Staff of Dhule Taluka Police Station raided the places of manufacturing of illicit liquor in the pith holes amongst

the bushes on the bank of Bori river in village Dhamangaon.Â In the said raid, there was explosion of inflammable spirit stored in a drum took place

and Officers and Staff Members of the Police Party were grievously injured.Â One Police Constable namely Ananda Dagdu Mali died in the said

explosion.Â Due to such spurious and harmful liquor, incidents of death of victims due to poisonous alcohol cannot be ruled out.

9. Learned A.P.P. further submits that when the Police Officials from Gondpimpri

Police Station, District Chandrapur went to arrest the Petitioner in connection with Crime No.412/2017, the Petitioner and others have made quarrel and assaulted to API Pravin Borkar and his Staff members and obstructed to discharge their legal duties.Â Therefore, the offence was registered against the Petitioner bearing Crime No.257/2017.Â It is submitted that the Petitioner is having history of criminal record. Till today, 13 offences are registered against the Petitioner, out of which 9 offences are registered in last 5 years, in which offences punishable under Chapter XVI and XVII of the Indian Penal Code as per Sections 328, 420, 304, 337, 353, 332, 323, 392 and offences under various Sections of the Bombay Prohibition Act are also included.Â The Petitioner is a bootlegger.Â It is submitted that the SDPO, Dhule Rural, Sakri Sub Division, has recorded the statements of two confidential witnesses.Â From the statements of those witnesses, it reveals that the Petitioner is involved in theÂ business of illegal liquor in his village and therefore witnesses are not willfully ready to come forward to give information to the Government or to depose against him.Â Thus, it is clear that due to fear of the Petitioner they did not come forward to give evidence against him.Â Â Â Â

10. Learned A.P.P. further submitted that after considering inÂcamera statements of the confidential witnesses recorded by S.D.P.O. and later on verified by the District Magistrate, the District Magistrate has also satisfied that due to criminal record nobody is coming forward to give complaint against the Petitioner, furthermore the criminal offences were also registered against the Petitioner therefore the activities of the Petitioner are detrimental to the interest of general public at large and he is a bootlegger and dangerous person within the definition of Section 2 [b] and 2 [bÂ1] of the Act of 1981.Â The District Magistrate has also satisfied that the Petitioner is habitual offender which adversely affects the society.Â Therefore, the District Magistrate, Dhule vide its detailed order dated 31st October, 2017, detained the Petitioner.Â Thereafter, the order was placed before the Advisory Board along with the detention proceedings and requisite documents under Section 9 of the Act of 1981.Â The Advisory Board has, after considering the reasons mentioned in the order passed by the District Magistrate, confirmed the order of detention of the Petitioner.Â Thereafter, the State Government has confirmed the order of detentionÂ passed by the District

Magistrate, Dhule and directed that detention of the Petitioner is confirmed for a period of one year from the date of detention.Â Â

11. Learned A.P.P. therefore submits that the Petitioner is indulging in illegal activities which are dangerous to the public at large and further more the Petitioner being habitual offender, the order of detention passed by the District Magistrate, Dhule and confirmed by the Home Department [Special], Government of Maharashtra is legal, proper and deserves to be maintained. He, therefore, prays that the Petition deserves to be dismissed.Â In

support of the aforesaid submissions, learned A.P.P. has placed the reliance upon the exposition of law in the case of Magar Pansingh Pimple Vs.

State of Maharashtra and another .Â Â Learned A.P.P. has also placed reliance upon the exposition of law in the unreported Judgment of the

Bombay High Court at Principal Seat, in the case of Sachin @ Bobby Sambhaji Shinde Vs. The Commissioner of Police in Criminal Writ Petition

No.1766 of 2017 along with connected Petitions decided on 13th October, 2017.Â Â

12. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner and learned A.P.P. appearing for the

RespondentÂState. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, reply filed on

behalf of the Respondents and also the Judgments relied on. We have also perused the original record maintained by the office of the Respondents.

13. Careful perusal of the order passed by the District Magistrate, Dhule dated 31st October, 2017, shows that inÂcamera statements of three

witnesses i.e. A, B and C were recorded. It is mentioned in the order dated 31st October, 2017, passed by the District Magistrate, Dhule, that witness

A, on making enquiry with him, stated that he personally knows the Petitioner. The witness further stated that the Petitioner does illegal business of

smuggling of liquor, the Petitioner prepares spurious liquor from chemicals and smuggles it. The witness further stated thatÂ the Petitioner had

purchased land at very less price by threatening a Brahmin of village Shirud and and is illegally selling plots from that land. The Petitioner is having

connection with sand mafia and is also involved in said activities. The order passed by the District Magistrate further reveals that witness B has also

stated that the Petitioner does illegal business of manufacturing spurious liquor

from spirit and chemicals. The witness CÂ has also stated that the Petitioner manufactures spurious liquor from chemicals and spirit and for the said business the Petitioner utilizes the services of unidentified boys from Bihar, Uttar Pradesh, Madhya Pradesh.

14. The record further reveals that during last five years,Â as many as nine offences have been registered against the Petitioner, being Crime No.

208 of 2013, 301 of 2014, 6009 of 2015, 188 of 2015, 316 of 2015, 125 of 2016,Â 412 of 2017, 224 of 2017 andÂ 257 of 2017.Â In the impugned

order, the District Magistrate has observed that the Petitioner has committed crimes such as manufacturing, transporting, storing and selling spurious

liquor without holding any valid license and obstructed public servants in discharging their duties. After considering the entire record, the District

Magistrate has passed the impugned order. The said order has been rightly confirmed by the Government of Maharashtra, Home Department

[Special]. The said authority has directed the detention of the Petitioner for a period of one year from the date of detention.

15. The Respondent authorities have brought enough material on record, including the C.A. report establishing that the Petitioner was manufacturing

spurious liquor. The material on record shows that the Petitioner is indulging into bootlegging activitiesÂ since the period of last five years, and he is a

person whose activities are covered under the definition of a ""bootlegger"" as contained in Section 2 [b] of the Act of 1981. The record further reveals

that when police party had carried out raid in the area where the Petitioner was carrying out his activities of manufacturing spurious liquor, in the said

process one police officer died due to thermal burns. Thus the record indicates that the action taken by the Respondent authorities in detaining the

Petitioner for the period of one year is justified.Â

16. After careful perusal of the record, we have noticed that the District Magistrate has recorded subjective satisfaction that the facts given in the

statements of the witnesses and apprehension expressed is true and reasonable. The District Magistrate has also recorded his subjective satisfaction

that the Petitioner is behaving in a manner detrimental to the maintenance of public order. Therefore, before passing the impugned order of detention,

all procedural formalities have been scrupulously followed, and after conscious application of mind, the District Magistrate has passedÂ the order of

detention. Upon careful perusal of the affidavit in reply filed by the State, it is clear that the State through its Department of Home has confirmed the order of detention.

17. So far as the ground agitated by the learned counsel appearing for the Petitioner that though the Petitioner has been acquitted from Crime No.208

of 2013, still the authorities have relied upon the registration of said crime while passing the detention order is concerned, the same deserves no

consideration for the simple reason that Crime No.208 of 2013 was not the only offence registered against the Petitioner, and as observed earlier,

during the period of last five yearsÂ the Petitioner has been involved in as many as nine offences.

18. It is argued on behalf of the Petitioner that the District Magistrate has no authority to pass the detention order. In this context, reference can be

made to Section 3 (1) and 3(2) of the Act of 1981, which reads as under:

3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to

the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a

Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as

may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in subÂsection (1), exercise the

powers conferred by the said subsection.

19. Thus, upon careful perusal of the provisions of Section 3(1) and (2) of the Act of 1981, it is crystal clear that State Government can very well

confer the powers upon the District Magistrate or Commissioner of Police to pass detention order, as the case may be. In the present case, District

Magistrate has passed the impugned detention order, who was the competent authority to pass such order.

20. Learned counsel appearing for the Petitioner has also raised another ground that order passed by the District Magistrate was not immediately

placed before the Advisory Board for its approval and on the count of delay the order of detention is liable to be vitiated. In this respect, it would be

useful to refer the provisions of Section 10 and Section 11(1) of the Act of 1981, which reads as under:

10. In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.

11. (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.

21. Thus, as per the provisions of Section 10 of the Act of 1981 it is necessary that a detention order shall be placed before the Advisory Board within three weeks, and further as per the provisions of Section 11(1) of the Act of 1981, the Advisory Board has to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In the present matter, District Magistrate, Dhule has passed the detention order on 31st October, 2017. Thereafter, immediately the said order was placed before the Advisory Board along with detention proceedings with requisite documents as provided under Section 9 of the Act of 1981. The Advisory Board, after considering the reasons mentioned in the order passed by the District Magistrate, has confirmed the order of detention. Therefore, by order dated 7th December, 2017 the Section Officer, Home Department (Special), Government of Maharashtra has confirmed the detention order issued by the District Magistrate, Dhule and directed the detention of the Petitioner for the period of one year from the date of his detention. Thus, it is clear that in the present case the Respondent authorities have completed all the formalities within the prescribed time limit and therefore there is no substance in the ground raised by learned

counsel appearing for the Petitioner that there was delay in placing the order of detention before the Advisory Board.Â Â Â

22. It is significant to note that Â sufficient material is brought on record by the Respondent authorities to show that the Petitioner is a dangerous

person within the meaning of Section 2(bÂ1) of the Act of 1981. The record shows that on one occasion when police personnel went to arrest the

Petitioner in a crime, the Petitioner and his accomplices tried to assault the police personnel. The record furtherÂ shows that the activities of the

Petitioner of selling spurious foreign liquor are not only restricted to Dhule District but the same are also spread over in another Districts such as

Chandrapur and Gadchiroli. As already observed, the Petitioner is involved in as many as 9 offences which are registered by way of separate crime

numbers, and also incamera statements of three witnesses have been recorded and on the basis of said cogent and sufficient material, the District

Magistrate arrived at subjective satisfaction that the Petitioner is a dangerous person and he is acting in a manner prejudicial to the maintenance of the

public order.Â The material brought on record by the Respondent authorities unequivocally indicates the involvement of the Petitioner in habitually

committing offences punishable under Chapter XVI and XVII of the I.P. Code.

23. Learned counsel appearing for the Petitioner has also raised a ground that the exact period of detention as required by law is not mentioned in the

order passed by the District Magistrate. So far as this ground is concerned, it would be useful to refer to the observations made by the Supreme Court

in the case of Mrs. T. Devaki vs. Government of Tamil Nadu and others , wherein it is held that order of detention not specifying the period of

detention does not make the order invalid. It is pertinent to note that in the present case in hand, the State Government has specifically mentioned the

period of detention, and it is ordered that the Petitioner be detained for the period of one year from the date of his actual detention.

24. In the light of discussion in foregoing paragraphs, we are of the considered view that the orders impugned in this Petition need no interference, and

the Petition is devoid of any merit. Hence, the Writ Petition stands rejected. Rule stands discharged.Â Â Â Â