

(2022) 06 BOM CK 0120

In the Bombay High Court

Case No : Criminal Writ Petition No. 736 Of 2021

Jaywanta

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 30-06-2022

Acts Referred:

Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers Drug-Offenders Dangerous Persons And Video Pirates Act, 1981 — Section 2, 2(a)(ii)

Citation : (2022) 06 BOM CK 0120

Hon'ble Judges : Sunil B. Shukre, J;G. A. Sanap, J

Bench : Division Bench

Advocate : R.D. Bhuibhar, M.J.Khan

Final Decision : Allowed

Judgement

Sunil B. Shukre, J

1. Heard Mr.R.D.Bhuibhar, learned counsel for the Petitioner and Mr. M.J.Khan, learned Additional Public Prosecutor for the Respondents, at length.
2. The petitioner has assailed his detention order dated 20th July, 2021 passed by respondent no.2 and the order dated 12th August, 2021 passed by respondent No.1 confirming his detention for a period of 12 months.
3. On going through the impugned order of preventive detention of the petitioner and several documents available on record, we find that the learned counsel for the petitioner is right in submitting that the impugned order suffers from fundamental defects and, therefore, has to be termed as 'perverse' and 'patently illegal.'
4. Mr. Khan, learned APP for the Respondents tried his level best to convince us that the impugned order is fully justified by the material on record but his such effort, with due respect to him, has not brought out any fruitful result.
5. Learned APP has taken us through the definition of the expression, 'acting in

any manner prejudicial to the maintenance of public order', as prescribed in Section 2(a)(ii) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug- offenders, Dangerous persons and video pirates Act, 1981 (henceforth abbreviated to "MPDA Act"), in so far as it applies to a bootlegger and also the explanation appended to it, in support of his contention that the activities of the petitioner are affecting maintenance of public order. He has also relied upon the law laid down by the Apex Court, in the case of Hasan Khan Ibne Haider Khan vs. R.H. Mendonca & others, reported in 2000 ALL MR (Cri) 1070.

6. As per Section 2 (a) (ii), activity of a bootlegger engaged in manufacture of illicit liquor could be considered to be something as being prejudicial to the maintenance of public order if his activity affects adversely or is likely to affect adversely, the maintenance of public order.

7. By the elucidation of the expression "in a manner prejudicial to the maintenance of public order" occurring in Section 2(a)(ii) MPDA Act, the legislature has made it clear that an activity of a bootlegger, by itself, cannot be presumed to be adversely affecting the public order but it has to be shown that it is of such a nature and of such order that it really affects adversely or is likely to affect adversely the maintenance of public order. Thus, it is necessary that the illicit activity of manufacture of liquor unauthorisedly must be of such a nature that it is not capable of being controlled by the ordinary law and order machinery and it is necessary that it is required to be brought under leash by resorting to extraordinary measure and this extraordinary measure being in the nature of preventive detention order, could be taken only when there is a link between the activity of engagement in manufacture of illicit liquor and public order resulting in its widespread adverse ramification on maintenance of public order. This is what the Apex Court has also held in the case of Hasan Khan (supra), while referring to the observations of the Hon'ble Supreme Court in earlier cases, of Amanulla Khan Pathan vs. State of Gujarat & others: 1995(5) SCC 613 and Mustakmiya Shaikh vs. M.M. Mehta: 1995(3) SCC 237. It observed that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determine whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order".

8. Even the explanation appended to Section 2 of the MPDA Act speaks on similar lines. It lays down that for the purpose of clause (a), public order shall be deemed to have been affected adversely or shall be likely to be affected adversely if any of the persons referred to in clause(a), directly or indirectly, acts in following manner :

(i) causes any harm, danger, or alarm or a feeling of insecurity among the

general public;

(ii) causes grave or widespread danger to life or public health;

(iii) causes disturbance in public safety and tranquility; or

(iv) disturbs the day to day life of the community by black-marketing in essential commodities resulting in causing scarcity in the supply of such items and rise in the prices of essential commodities or disturbs life of the community by producing and distributing pirated copies of music or film products.

9. It would be clear from the explanation given in clause (a) that the illegal activity of any of the persons referred to therein must ultimately result in harm, danger or alarm or feeling of insecurity among the general public or any section thereof or must lead to grave and widespread danger to life or public health or disturbance of any public safety and tranquility or serenity or even tempo of day-to-day life. The keywords in the explanation which we must take note of are "illegal activity resulting in causing of harm, danger or alarm or feeling of insecurity among the general public or any Section thereof" or "causing of widespread danger to life or public health". In other words, the disturbance must not be at individual or smaller level but must transcend to community level. Mere contravention of law may not necessarily result in disturbance of public order though it may rather it does disturb order. This is clear from what is held in the case of *Ashok Kumar vs. Delhi Administration & others*: AIR 1982 SC 1143, when it was observed, "the true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the act, but in the degree and extent of its reach upon society." This has been explained in different words by the Supreme Court in *Ram Manohar Lohia (Dr) vs. State of Bihar and others* : AIR 1966 SC 740, as follows :-

"....The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are."

Similar, proposition of law is laid down in *Banka Sneha Sheela v. State of Telangana* : (2021) 9 SCC 415, when it was observed in para 14, thus:-

"There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must affect the community or the public at large."

10. These principles of law would impel the detaining authority thinking any bootlegging activity as providing sufficient ground to detain a person to think again and record its satisfaction that the bootlegging activity indulged in by a person like the petitioner, has resulted or is likely to result in causing widespread disturbance among general public or such harm or danger, alarm or feeling of

insecurity of such a nature that ordinary law and order measure would not suffice and a more telling; drastic and extraordinary devise of preventive detention is required.

11. On a careful scrutiny of the impugned order in the present matter, we do not find any such satisfaction having been reached by the detaining authority. The detaining authority has simply presumed that the activity of bootlegging of the petitioner has resulted in disturbance of public order which presumption, in our view, could not have been resorted to in the absence of relevant material. At the cost of repetition, we may say that the essential condition for recording such a satisfaction is that the illegal activity must be of such a nature that it travels beyond the capacity of the ordinary law to deal with. This is, however, not the case here. On this ground, we find that the impugned order is bad in law.

12. Apart from what is stated above, we also find that two bootlegging crimes registered against the petitioner, under the provisions of Maharashtra Prohibition Act, do not bear any live link with the object sought to be achieved by the impugned order in as much as both these offences have been registered on 23rd March 2021 and 21st April 2021 respectively, whereas the impugned order has been passed almost about 3/ 4 months thereafter. There is no material available on record which would show that the petitioner has continued in his bootlegging activity after March/April, 2021. The two statements of the confidential witnesses also do not refer to any period of time when the alleged incidents occurred thereby rendering their verification difficult. These statements, therefore, would not constitute any relevant material for the detaining authority to reach the requisite satisfaction.

13. In the result, we find that the impugned order cannot be sustained in the eye of law. The Writ Petition is allowed in terms of Prayer clause (a) which reads thus:

(a) Issue an appropriate writ, direction or order to quash and set aside the impugned order dated 12.08.2021 issued by the respondent no.1-State of Maharashtra, through its Secretary, Home Department (special), Mantralaya, Mumbai (Annexure "F") whereby the detention order dated 20.07.2021 passed by the respondent no.2, District Magistrate and Collector, Yavatmal, came to be confirmed. "

Rule is made absolute in the above terms. Pending Applications, if any, are disposed of, in terms of the final order.

Needless to mention that the petitioner be released forthwith, if not required in any other crime.