

(2023) 01 BOM CK 0002

In the Bombay High Court

Case No : Criminal Writ Petition No.2633 Of 2022

Prakash Chainshing Navale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 226
Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Non Licensed Performers Of Audiovisual Arts (Video Pirates), Sand Smugglers And Person Engaged In Black Marketing Of Essential Commodities Act, 1981 — Section 2(b), 3(1)
Indian Penal Code, 1860 — Section 304
Maharashtra Prohibition Act, 1949 — Section 65(e), 65(3)

Citation : (2023) 01 BOM CK 0002

Hon'ble Judges : A.S.Gadkari, J;Prakash D. Naik, J

Bench : Division Bench

Advocate : Priyal G. Sarda, S.D.Shinde

Final Decision : Dismissed

Judgement

Prakash D. Naik, J

1. Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the order of detention dated 25th May 2022 issued by District Magistrate, Pune under Section 3(1) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Non Licensed performers of Audiovisual Arts (Video Pirates), Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as MPD Act).

2. The order of detention was executed upon Petitioner along with grounds of detention dated 25th May 2022 accompanied with the documents relied upon by Detaining Authority while issuing order of detention.

3. The impugned order of detention has been issued with a view to prevent the

Petitioner/Detenu from acting in any manner prejudicial to the maintenance of public order. The grounds of detention specify that the detention order is based on grounds stipulated in paragraph 4 of the said grounds. Paragraph 4 refers to the offence registered with Vadgaon Nimbalkar Police Station in respect to Crime dated 9th March 2022. It is alleged that Petitioner/Detenu was found in possession of 24 plastic balloons with total 6 liters of liquor in his possession. He was selling ready made liquor to his acquaintances. The grounds also referred to the statement of confidential witness 'A' and confidential witness 'B' which were recorded on 14th March 2022 and 17th March 2022. Paragraphs 6 and 7 of the grounds of detention refer to the subjective satisfaction recorded by Detaining Authority for issuing the Order of Detention.

4. Learned advocate for Petitioner made following submissions :

(i) The Petitioner has been supplied incorrect translation. In ground No.4(b)(i), reference is made to the statement of confidential witness 'A'. In Marathi version of the grounds of detention relating to said statement it was stated that the Detenu has threatened that he should not interfere in the business and he was assaulted. Whereas, in the English translation of the grounds of detention, there is no reference to 'assault'. In respect to the incident reflected in paragraph 4(a) of the grounds of detention in Marathi version it is stated that offence was registered u/s.65(e) of Maharashtra Prohibition Act, 1949. Whereas, in the English translation it is stated that offence was registered u/s.304 of IPC. It is submitted that supply of incorrect translation has affected the right of Detenu under Article 22(5) of Constitution of India. In support of his submission, reliance is placed on the decision of this Court in the case of Bharat Kisan Mekale Vs. The Commissioner of Police, Solapur 2021-0-Supreme(Bom)-324;

(ii) The incident referred in ground 4(a)(i) had allegedly occurred on 9th March 2022 at 22.15 hours, whereas in the same paragraph it is mentioned that the FIR was registered with Vadgaon Nimbalkar Police Station at 16.42 hours. If the incident had occurred at 16.40 hours, the question of registering the FIR at 16.42 hours does not arise. The averments shows non application of mind on the part of Detaining Authority;

(iii) The Detaining Authority had relied upon statement of two witnesses recorded in-camera. The statement dated 14th March 2022 and 17th March 2022 do not show any cognizable offence and police were not authorized to investigate said offence without prior permission of competent Court and the alleged offence committed by Detenu cannot be considered for the purpose of detention;

(iv) The incident dated 9th March 2022 had occurred inside the house. The incident in no manner affects maintenance of public order. Reliance is placed on the decision of Supreme Court in the case of Pushkar Mukherjee and others Vs. The State of West Bengal AIR-1970-SC-852;

(v) The order of detention has been issued against Petitioner considering the alleged activities of bootlegging, which is reflected in ground 4(a) of the grounds

of detention. The subjective satisfaction of Detaining Authority, however, indicate that authority has considered the acts of Petitioner as dangerous person which reflects non application of mind. Reliance is placed on the decision of this Court in the case of Anil Preetam Kumbhar Vs. Commissioner of Police, Pune and others 2019-ALL MR (Cri)-1220.

5. Learned APP submitted that as far as grounds relating to incorrect translation is concerned, the Petitioner understands Marathi. The Order of Detention was issued in Marathi. The grounds of detention were formulated in Marathi. There is no infirmity in Marathi version of grounds of detention supplied to Petitioner. Reference to Section 304 of IPC in English translation is only a typographical error. Absence of 'assault' in English version does not cause any prejudice to the Petitioner since original Marathi version of grounds of detention does not suffer from any infirmity. In the affidavit in reply it is stated that, the statement that offence was registered u/s.304 of IPC, was a typing mistake. In the Marathi version of grounds correct details of offence have been mentioned. The Detenu is well versed with Marathi language. His mother tongue is Marathi. The typing mistake in the English version of the grounds does not affect the trustworthiness of the fact. C.R No.103/2022 has been registered under Section 65(3) of Maharashtra Prohibition Act, 1949. Learned APP has relied upon decision of this Court in the case of Dharmendra Kamlakar Tangadi Vs. Commissioner of Police, Thane and others 2012-ALL MR (Cri)-2433.

6. It is submitted that second ground urged by Petitioner is devoid of merits. Merely on the reference of time of registration of FIR at 16.42 hours, does not reflect non application of mind. The FIR relating to C.R No.103 of 2022 is amongst the compilation of documents supplied to the Petitioner, which clearly indicates that incident had occurred at 12 noon and the FIR was registered at 16.42 p.m.

7. The in-camera statements refer to the incidents narrated by two witnesses. There is no prohibition to refer such statements for issuing Order of Detention. The Detenu was arrested on 13th April 2022 in respect to C.R No.103 of 2022. He was released on bail on 13th April 2022. Confidential inquiry was conducted and statements of Witnesses 'A' and 'B' were recorded on 14th March 2022 and 17th March 2022. These two witnesses refer to illegal activities carried out by the Detenu and fear in the minds of victims. Thus, witnesses were not willing to give any statement but on the assurance of non disclosure of their identity as well as assurance that they will not be called before any forum or authority, they gave their statements. The statements of in-camera witnesses show that, the Detenu was indulging in sale of illicit country made liquor and is a known bootlegger. The Detenu was engaged in transporting and selling country made liquor in contravention of Maharashtra Prohibition Act. The statement of witness 'A' reveals that illegal country made liquor business has contaminated the river as pollutant chemicals are released into the river basin and lands have become barren, aquatic animals have died due to water pollution. The witness has stated

about atrocities caused by the Detenu. The Detenu and his accomplices were armed with iron pipe, wooden sticks; attacked the witness and threatened that he should not interfere with the business of Detenu. The public gathered on the spot were also threatened by Detenu. Due to terror of Detenu and his accomplices, no one came forward to help the witness. Witness 'B' has stated that the Detenu and his associates moved around area of Nimbhat Laxminagar and abuses people. The incident narrated by in-camera witness indicate that in order to carry out his illegal activities, the Detenu and his accomplices threatened the persons who objected his activities and thereby he had become perpetual and potential danger to the safety and security of society. The genuineness and trustworthiness of the statements of in-camera witnesses was verified by Sub Divisional Police Officer, Bhore Sub Division, Saswad, District Pune on 8th April 2022. He was authorised by Superintendent of Police, Pune (Rural) by letter dated 5th April 2022. The question of registering FIR in respect to the statements of said witnesses does not arise as they were not willing to come forward. The in-camera statements of witnesses can be utilized by Detaining Authority for passing Order of Detention.

8. Learned APP further submitted that incident dated 9th March 2022 and the incident referred to in the statement of witnesses 'A' and 'B' clearly affects maintenance of public order. The record shows that Detenu has indulged in the activities which are prejudicial to public order. The in-camera statements given by the witnesses show that alleged activities of the Detenu reflects the magnitude of his activities and it even affects the tempo of life of society at large. The Detenu has abused and threatened the peace loving people. The activities are causing wide spread danger to life and health of public residing in the jurisdiction of Vadgaon Nimbalkar Police Station by selling and transporting illicit liquor. His activities have resulted in causing disturbance in public order. C.R No.103 of 2022 was registered on 9th March 2022 after conducting raid. The raid was not inside the house. He was found in possession of 24 balloons containing illicit liquor. The material seized on the spot was sent to Chemical Analyzer and report was received that it contained 13% Ethyl Alcohol. Information was sought from the Health Officer and said information indicate that over consumption of seized liquor can be dangerous to life of human being.

9. Learned APP submitted that last ground urged by Petitioner about non application of mind with regards to subjective satisfaction of Detaining Authority, which indicated that Detaining Authority was considering issuance of Order of Detention by arriving at conclusion that Detenu was a dangerous person, deserves to be rejected. The Detaining Authority has clearly stated that the Detenu was indulging in bootlegging activities and his activities were detrimental to public order.

10. We have perused the grounds of detention in Marathi and its translation in English. We have also perused the documents supplied to the Detenu/Petitioner and the affidavit in reply filed by respondents.

11. The first ground urged by Petitioner relates to translation. It is pertinent to note that Detention Order and grounds of detention were prepared in Marathi Language. English translation of order and grounds of detention is also supplied to the Detenu. The grievance of Petitioner is that in respect to the incident dated 9th March 2022 which is subject matter of ground No.4(a)(i), the English translation refers to offence being registered u/s.304 of IPC. The Marathi version of grounds of detention clearly mentions that offence was registered u/s.65(e) of Maharashtra Prohibition Act, 1949. Petitioner knows and understands Marathi language. Marathi version clearly refers to the offence registered against Petitioner. As per the prosecution, English translated copy of detention Order and other related documents were supplied to Petitioner for complying with necessary procedure. At the most therefore it is merely a typographical error and does not affect the right of Detenu under Article 22(5) of Constitution of India in any manner.

12. Other grievance relating to translation is that in respect to the statement to witness 'A'. The words 'assault upon Detenu' are missing from English grounds of detention, which are reflected in Marathi version of grounds of detention. It is not disputed that the Petitioner understands Marathi. Assuming that the word 'assault' is missing in the English version of grounds of detention, we do not find that it would affect the right of Detenu under Article 22(5) of Constitution of India.

13. Learned advocate for Petitioner has relied upon decision of this Court in the case of Bharat Kisan Mekale Vs. The Commissioner of Police, Solapur (supra). The Detenu therein had urged that there was variance in English and Marathi version as regards version of facts in the grounds of detention, which rendered the right to make an effective representation illusory. It was contended by respondent therein that the Detenu was conversant with Marathi script and no prejudice was caused to him on account of inadvertent reproduction of narration of facts in ground. This Court has observed that on perusal of narration of facts under ground no.5.1 and 5.2 in respect of C.R No.29/2021 and 57/2021 respectively, it becomes evident that the narration of facts under ground No.5.2 (for C.R No.57/21) is verbatim reproduction of narration of facts under ground No.5.1 in respect of C.R No.29/2021. Conversely, the grounds of detention are conspicuously silent about the facts pertaining to C.R 57/2021. Thus, from the factual aspects of that matter, it is apparent that narration of entire C.R was missing on account of reproduction of facts in other C.R in respect of two offences. The narration of facts was one and the same and there was complete omission to incorporate in the grounds of detention the narration of facts pertaining to one C.R. In the circumstances the Court rejected the submission of respondents that it was inadvertent reproduction. The said decision therefore is not applicable in the facts of present case.

14. In the case of Dharmendra Kamlakar Tangadi Vs. Commissioner of Police, Thane and others (supra), relied upon by learned APP, it was observed that

omission to literally translate stated words in Marathi version does not and cannot be the basis to complain that Detenu's right to make effective representation was abridged. It was contended on behalf of Detenu in the said decision that Detenu was furnished with grounds of detention in Marathi language to enable him to make effective representative, however, there is variance in Marathi version of grounds of detention served on him. In English version of grounds of detention it was stated that copies of documents relied upon and found subjective satisfaction were absent in Marathi version of the grounds of detention, which deprived him of effective representation. This Court observed that on a bare reading of Marathi version it is noticed that free translation has been done and it conveys the meaning of paragraph of ground of detention in English. The grounds of detention must be read as a whole to ascertain the factum of subjective satisfaction recorded by Detaining Authority in the grounds of detention. The variance pointed out is not vital so as to vitiate the Detenu's detention on the ground that it has affected the right of Detenu to make effective representation.

15. The second submission advanced by learned counsel for Petitioner is about non application of mind in formulating grounds of detention. It is urged that in ground 4(a)(i), it is stated that incident took place on 9th March 2022 at 22.15 hours and the FIR was registered at 16.42 hours. The contention of Petitioner is that if the incident took place at 22.15 hours, the question of registering the FIR at 16.42 hours does not arise. Minor typographical error would not vitiate the order of detention. The FIR relating to the incident was supplied to the Petitioner, which clearly indicate that the incident had occurred at 12.00 noon and the FIR was registered vide C.R No.103/2022 at 16.42 hours. We do not find that there was non application of mind by the Detaining Authority while formulating grounds of detention.

16. The in-camera statements of witnesses 'A' and 'B' were recorded on 14th March 2022 and 17th March 2022. Both these witnesses have referred to the activities of Petitioner. The purpose of recording statements in-camera is on account of fear created by Detenu and since witnesses were not willing to come forward to depose against Detenu. The nature of fear created by Detenu is referred to by both the witnesses. The affidavit in reply filed by respondents mentions that statements were verified. The reply also mentions threat/fear created by the Detenu amongst those witnesses and other persons. Hence, submission that FIR was not registered in respect to the said incidents and that such incidents cannot be considered while there was no order of detention, is devoid of merits and deserves to be rejected.

17. The incident relating to C.R No.103/2022 registered with Vadgaon Nimbalkar Police Station for offence u/s.65(3) of Maharashtra Prohibition Act, 1949 and two in-camera statements, are sufficient to arrive at the conclusion that Petitioner is indulging in activities disturbing maintenance of public order. The submission of learned counsel for Petitioner is that incident dated 9th March 2022 does not

affect public order. The factual aspects of said incident indicate that the Detenu was found in possession of 24 plastic balloons filled with liquor. The liquor seized in this case was sent to Assistant Scientific Laboratory. Inspection report was received and it has been mentioned that liquor contained 13% Ethyl Alcohol. The record also indicate that opinion of Health Officer was obtained, which indicate that liquor is hazardous to health. Statements of two witnesses were recorded who have referred to the activities of Detenu as bootlegger and fear created by him amongst the minds of citizens. The incident dated 9th March 2022 and statements of two witnesses recorded in-camera are sufficient to hold that activities of Detenu re prejudicial to the maintenance of public order.

18. The decision relied upon by learned counsel for Petitioner in the case of Pushkar Mukherjee and others Vs. The State of W.B (supra), was applicable to the facts of that case. In fact, said decision makes it clear that contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large.

19. The last submission advanced by learned advocate for Petitioner is relating to subjective satisfaction of Detaining Authority. It is contended that the Detaining Authority has considered the activities of Petitioner as bootlegger. However, the subjective satisfaction of Detaining Authority would indicate that the Detaining Authority has considered the activities of Detenu as a dangerous person which reflects non application of mind. Learned counsel for Petitioner has relied upon the decision of this Court in the case of Anil Preetam Kumbhar Vs. Commissioner of Police, Pune and others supra). It is pertinent to note that impugned order of detention has been issued with a view to prevent a Detenu from acting in any manner prejudicial to the maintenance of public order. The Detaining Authority has considered the incident dated 9th March 2022 which has resulted in registration of C.R No.103/2022 u/s.65(3) of Maharashtra Prohibition Act. It is true that Detaining Authority has considered the bootlegging activity of Petitioner/ Detenu while issuing the order of detention. The Detaining Authority has also relied upon statements of two witnesses recorded in-camera. These two witnesses have referred to the activities of Petitioner and the threats. Witness `A' has stated that Detenu and his accomplices have threatened the witnesses with iron pipes and sticks. He was threatened not to interfere in their business. The shop keepers, residents and passersby gathered were threatened by Detenu and associates. Due to terror no one came to the aid of witness. He did not lodge any complaint due to fear. Witness `B' has referred to the effects of consumption of alcohol and activities of Detenu occurred in February-2022. It is stated that the associates of Detenu were abusing in public place the school girls. The girls changed their route. The Detenu was told not to sale the liquor in the said area as women and girls were harassed. The witness was threatened. Due to fear he did not lodge the complaint. In paragraph 6 of the grounds of detention it is stated that Detaining Authority is satisfied that Detenu is a bootlegger within the meaning of Section 2(b) of MPD Act. He is a reckless person carrying arms, selling and distributing alcohol in violation of Maharashtra Prohibition Act. He is

potentially dangerous. He is terrorizing the area of Vadgaon Nimbalkar Police Station in Pune District and carrying out illegal activities and illegal business and is endangering health of public. The public in the area are feeling unsecured and endangered and their daily activities are fraught with fear due to the on going illegal activities as well as dangerous activities they are carrying out. His actions in the above area are hindrance in maintaining public order in such a way that all normal life of the citizens of the area are disrupted. In paragraph 7 it is stated that Detaining Authority has gone through the material placed before him and confidential statements of 'A' and 'B'. The Detaining Authority is satisfied that in view of his tendencies and inclinations reflected in the offences and crimes, the Detaining Authority is satisfied that the Detenu is acting in the manner prejudicial to the maintenance of public order. It is pertinent to note that subjective satisfaction is based on material on record. Thus, order of detention was issued with a view to preventing the Detenu from acting in any manner prejudicial to the maintenance of public order. We do not find that there was any non application of mind while formulating subjective satisfaction by Detaining Authority. The grounds of detention would reflect that as a bootlegger, the Detenu was indulging in the activities which are prejudicial to the maintenance of public order and impugned order was issued to prevent him in acting in such activities. It cannot be said that order travels to the extent of detaining a dangerous person and that it reflects non application of mind. We do not find any infirmity in the subjective satisfaction arrived at by the Detaining Authority and hence submissions advanced by learned counsel for Petitioner in that behalf deserves to be rejected.

20. Thus, the grounds urged by the Petitioner are not sufficient to set aside the impugned order of detention and hence petition deserved to be dismissed.

ORDER

- (i) Writ Petition is dismissed;
- (ii) Rule is discharged;