

(2024) 02 BOM CK 0052

In the Bombay High Court

Case No : Criminal Writ Petition No. 1840 Of 2023

Rajabhau Ramdas Ade

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
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 3(1), 3(2)
Bombay Prohibition Act, 1949 — Section 65, 65(e)(f)
Maharashtra Police Act, 1951 — Section 93
Code Of Criminal Procedure, 1973 — Section 41(A)

Citation : (2024) 02 BOM CK 0052

Hon'ble Judges : Mangesh S. Patil, J; Shailesh P. Brahme, J

Bench : Division Bench

Advocate : B.R. Warma, V.K. Kotecha

Final Decision : Allowed

Judgement

@JUDGEMENT- JUDGEMENT

Shailesh P. Brahme, J

1. Rule. Rule is made returnable forthwith.
2. Heard litigating sides finally with their consent.
3. The petitioner is challenging order dated 26.10.2023, passed by respondent no. 2 - District Magistrate, detaining him under Section 3 (1) 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' for the sake of brevity and convenience). The petitioner has been held to be bootlegger and his activities are held to be detrimental to the public order.

4. The Detaining Authority has arrived at subjective satisfaction on the basis of two offences registered against the petitioner under section 65 (e) (f) of Maharashtra Prohibition Act, a proceeding under section 93 of Maharashtra Police Act and two statements of the witnesses.

5. Learned counsel for the petitioner submits that the material pitted against the petitioner is scanty and the drastic action under the act was not warranted. He would further submit that material against the petitioner does not show any disturbance to the public order. According to him, the subjective satisfaction of the detaining authority is defective and perverse. It is further contended that impugned action is vitiated because the opinion of the Advisory Board was not supplied to the petitioner. It is further submitted that the grounds of detention were not supplied to the petitioner and only order of one page was served on him. He would further submit that the representation dated 08.11.2023, has not been taken into account, thereby adversely affecting his fundamental right, being violative of Article 22 (5) of the Constitution.

6. Learned counsel for the petitioner seeks to rely upon the judgments in the matter of Nilesh Bansilal Gaywal @ Ghaywal Versus State of Maharashtra, passed by Bombay High Court at Principal Seat in Criminal Writ Petition No. 1768 of 2021 and in the matter of Hanif Karim Lалуwale Versus State of Maharashtra and others, passed by High Court at Nagpur Bench, in Criminal Writ Petition No. 75 of 2022.

7. To repel the submissions of the petitioner, learned APP would point out from the grounds of detention that the reasoned order has been passed by the Detaining Authority, considering all aspects of the matter. He would submit that there is incriminating material available with respondent no. 2 to arrive at the subjective satisfaction against the petitioner. It is further submitted that despite the preventive action under section 93 of Maharashtra Prohibition Act, the petitioner indulged in the overt act leading to registration of CR No. 231 of 2023, on 11.08.2023. Considering in-camera statements of the witnesses and if verification, the detaining authority is justified in passing impugned order.

8. We have considered rival submission. We have gone through the relevant papers produced by the petitioner as well as the compilation which is made available by learned APP.

9. In the present case, criminal antecedents are as follows :

(i) C.R. No. 213 of 2023 registered on 02.08.2023, with Ambajogai Rural Police Station, District Beed, for the offence punishable under Section 65 of Maharashtra Prohibition Act and C.R. No. 231 of 2023, registered on 11.08.2023, with self-same Police Station under the self-same Act.

(ii) Chapter Case No. 10 of 2023, registered under Section 93 of Maharashtra Prohibition Act.

(iii) In-camera statements of two witnesses are considered by the Detaining

Authority for passing impugned order. After the impugned order, an approval under Section 3 (2) of the Act, was solicited on 06.11.2023. On 30.11.2023, the Advisory Board tender its opinion. It was considered by respondent no. 1 – State of Maharashtra and impugned order was confirmed on 14.12.2023.

10. It reveals from the record that in all four offences registered against the petitioner were before the Detaining Authority. Out of them CR No. 213 of 2023 and 231 of 2023 were considered for taking action against the petitioner. First Information Report of CR No. 213 of 2023 discloses that the petitioner was found to be manufacturing illicit liquor. In CR No. 231 of 2023, he was found to be in possession of illicit liquor. In both the matters, he was served with the notices under section 41 (A) (1) of the Code of Criminal Procedure.

11. We have also carefully gone through the statements of the witnesses. Witness A alleged about having been beaten and threatened by the petitioner. It appears that no offence was registered for the act of the petitioner. Another witness B also alleged about being manhandled by the petitioner. But the reason for that as appearing from the statement was a dispute over the wages. The witness appears to be associated with the petitioner. The statements do not disclose the alleged activity of the petitioner, has any potential of causing disturbance to the public order.

12. Similarly, after carefully considering the First Information Reports and the relevant documents pitted against the petitioner, we do not find that the activities of the petitioner can be said to be prejudicial to the public order. The material against the petitioner is scanty to justify the drastic action. It reveals from the record that the petitioner indulged in activity of bootlegging. This can be curbed by normal penal laws. At the most the activities can be said to be detrimental to the law and order.

13. In the matter of Nilesh Bansilal Gaywal @ Ghaywal (supra). On similar set of facts, in paragraph no. 16 it was held that the petitioner was not involved in disturbing public order. Even observation in Hanif Karim Luluwale (supra), paragraph no. 11 are relevant which are as follows :

“11. The impugned order, it is further seen, also does not explain as to how bootlegging activity per se and by itself would adversely affect public order. Any bootlegging activity in which involved is manufacture of illicit liquor can be presumed to be adversely affecting public health. But, there is no presumption in fact or law that every incidence of disturbance of public health would necessarily result in disturbance of public order. Covid-19 pandemic is the biggest example of this preposition. During that period of time, public at large was afflicted with Covid-19 infection. It was an en masse phenomenon but, our common experience has shown that it did not lead to disturbance of public order in general. Therefore, the authorities would be required to satisfy themselves as to how disturbance of public health in certain cases would result in also disturbance of public order. Such satisfaction has not been reached in the present case.”

14. We concur with the observations and are inclined to follow the view. We are of the considered opinion that the subjective satisfaction of the Detaining Authority is based on material which is not sufficient.

15. We have also considered the purport of the statements of the witnesses and the prohibitory order passed against the petitioner. We do not find any element of public order. Learned APP has vehemently argued that last offence registered against the petitioner was being committed in breach of the bond executed by the petitioner in pursuance of Chapter Case No. 10 of 2023. The record shows that no serious offence under the Penal law has been registered against the petitioner. Both the offences pitted against him are under investigation. The petitioner has indulged in manufacturing and possession of illicit liquor. Under the facts and circumstances of the case, we find that the drastic action under the Act is unwarranted. The activities of the petitioner can be curbed by the normal penal laws. We do not find any merit in the submissions of learned APP.

16. The petitioner has criticised the procedural formality and violation of principles of natural justice. On 27.10.2023, the ground were served upon the petitioner. The proposal was forwarded to the Advisory Board. After considering the grievance of the petitioner, on 30.11.2023 opinion was tendered by the Advisory Board to the State Government. We do not think it fit to render any finding on the point whether the opinion expressed by the Advisory Board would be liable to be divulged to the detenu in this matter. As the petitioner has succeeded on a substantial point of subjective satisfaction, other aspects of the matter are inconsequential.

17. For the reasons stated above, we are inclined to allow the petition. We, therefore, pass the following order :

ORDER

- i. Criminal Writ Petition is allowed.
- ii. Order dated 26.10.2023, passed by respondent no. 2 is quashed and set aside.
- iii. The petitioner shall be released forthwith.
- iv. Rule is made absolute in above terms.