

(2024) 03 BOM CK 0010

In the Bombay High Court

Case No : Criminal Writ Petition No. 1858 Of 2023

Santosh Subhash Koli

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 04-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers,
Drugoffenders, Dangerous Persons And Video Pirates Act, 1981 — Section 2(b), 5A

Citation : (2024) 03 BOM CK 0010

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

Bench : Division Bench

Advocate : Abid R. Shaikh, S. S. Joshi

Final Decision : Dismissed

Judgement

Shailesh P. Brahme, J

1. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. This petition seeks to challenge order dated 29.09.2023 passed by the District Magistrate, Jalgaon detaining the petitioner U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience).

3. The respondent No. 2/District Magistrate proceeded against the petitioner U/ Sec. 3(1) of the M. P. D. A. Act on the basis of five offences, two preventive actions and in camera statements of the witnesses. The petitioner is held to be a bootlegger, whose activities are recorded to be prejudicial to the maintenance of public order.

4. The learned counsel for the petitioner has advanced following submissions :

I. Subjective satisfaction is perverse.

II. In CR No. 760/2018 and CR. No. 24/2019, the petitioner does not figure in FIR.

III. Most of the crimes are shown to be against one Santosh Raut not the petitioner.

IV. There is no incriminating material to proceed against the petitioner for draconian action.

V. There is no expert opinion solicited on the chemical analyzers reports.

VI. There is delay in taking action against the petitioner.

VII. In camera statements have not been verified by the competent authority.

5. The learned counsel for the petitioner places reliance on the following judgments in support of his submissions.

(i) Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others reported in 1993 SCC (Cri) 392.

(ii) District Collector Ananthapur and another Vs. V. Laxmanna reported in (2005) 3 SCC 663.

(iii) Judgment dated 09.02.2024 of this Court in the matter of Ganesh @ Nana Gangaram Koli Vs. The State of Maharashtra and others in Cri. W. P. No. 1530 of 2023.

6. The learned Assistant Public Prosecutor supports the impugned order. She seeks reliance on the affidavit in reply filed to repeal the submissions of the petitioner. She would submit that there is cogent material against the petitioner which is rightly appreciated by the detaining authority. The petitioner has been properly identified and he is involved in the offence pitted against him. The time line has been properly followed by the authorities. There is due verification of in camera statements. As such there is no infirmity or illegality in the impugned action.

7. The learned A. P. P. has placed reliance on following judgments :

A. Hasan Khan Ibne Haider Khan Vs. R. H. Mendnoca reported in 200 (5) Bom.C.R. 814.

B. Judgment dated 17.01.2024 of this Court in the matter of Vinod Dhannulal Jaiswal Vs. District Magistrate and others in Cri. W. P. No. 1430 of 2023.

8. We have considered rival submissions of the parties. All offences registered against the petitioner, which are considered by the detaining authority are under the provisions of the Maharashtra Prohibition Act, 1941. It cannot be ignored that two offences bearing CR No. 124/2020 and 530/2021 under the self same Act were registered, preceding CR No. 581/2021 which is considered by the

respondent No. 2. The petitioner appears to have been involved in the criminal activities between 2018 to 2023. Last, two offences bearing CR. No. 375/2023 and 573/2023 have been registered after the preventive action U/Sec. 93 of the Maharashtra Prevention Act is taken against the petitioner. Preventive action has not deterred the petitioner from continuing with his notoriety.

9. In all offences which are considered by the detaining authority, the petitioner is found to be in possession of illicit liquor and selling it. In camera statements of both the witnesses reveal that the petitioner has a illicit liquor den at various places in the vicinity of Kusumba. He is aggressive and has a tendency to terrorise people. Nobody dares to complain against him or depose against him. The activities of the petitioner are squarely covered by definition of bootlegger provided in Section 2(b) of the M.P.D.A. Act.

10. We have perused in camera statements of both the witnesses. The statements have been verified by Sub Divisional Police Officer on 06.09.2023. We don't find any infirmity in the statements and verification. The petitioner suffered preventive action U/Sec. 93 of the Maharashtra Prohibition Act on 06.04.2022 and 15.06.2023. He is reported to be habitual offender. He has created terror. He operates dens at various places of Kusumba. Young generation is the victim of the activities of the petitioner which is affecting peace and tranquility. Above material shows that the activities of the petitioner are detrimental to the public order.

11. The preventive action against the petitioner is based on only five offences. CR No. 760/2018 and 24/2019 have not been considered by the detaining authority. Therefore, the submission in respect of these offences is not relevant. We do not find any fault in the subjective satisfaction arrived at by the respondent No. 2.

12. The learned counsel for the petitioner has drawn our attention to school leaving certificate produced on record to show that petitioner's name is Santosh Subhash Koli. We have gone through relevant papers. It is true that at many places name appearing is Santosh Subhash Raut. However, notices U/Sec. 41(1-A) of the Criminal Procedure Code have been served upon the petitioner in all the offences except CR. No. 375/2023. There is no material on record to show that he has ever refused to accept the notice or challenged the identity. He has secured bail in various offences. Therefore his plea raising doubt about identity does not warrant consideration.

13. We have gone through the reports of the chemical analysis collected during the investigation of the offences pitted against the petitioner. The petitioner does not hold requisite licence or permit to manufacture liquor. His activity is prohibited under the statute. The report of the chemical analysis shows the percentage of ethyl alcohol in water. In the absence of any permit or licence any activity of manufacturing of liquor is per-se illegal. Therefore, consumption of such illicit liquor would be injurious to public health. We are of the considered

view that an expert's opinion would not be required. We find no merit in the submissions of the petitioner in this regard.

14. The petitioner has referred to offences of the year 2021 and 2022 to contend that the stale offences have been referred. The offences referred by the detaining authority are from 01.09.2021 to 08.08.2023. The offences prior to 01.09.2021 have not been taken into consideration. Last two offences are registered on 10.06.2023 and 08.08.2023. In camera statements were recorded on 02.09.2023 and 03.09.2023. They were verified on 06.09.2023. The detaining authority received proposal on 18.09.2023. We do not find any delay or absence of live link between the material against the petitioner and the proposed action.

15. The learned counsel for the petitioner has referred to judgment of the Supreme Court in the matter of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others (supra) on the point of delay. We have considered paragraph Nos. 13 and 14. We find that the judgment is distinguishable on facts and may not help the petitioner.

16. Next judgment cited by the petitioner is in the matter of District Collector Ananthapur and another Vs. V. Laxmanna (supra) on the point that there is no material available on record to show that the activities of the petitioner are dangerous to public health. We have recorded a finding that expert's opinion in the present case is not necessary to draw an inference that the consumption of illicit liquor would be dangerous to public health. Therefore, the ratio laid down in the judgment may not apply to the present case.

17. Lastly, the learned counsel for the petitioner has relied upon the judgment of our Bench in the matter of Ganesh Vs. State of Maharashtra (supra). Our attention is invited to paragraph No. 12 of the judgment. In that matter, we had recorded that there was no live link between the order of detention and material for detention. That matter differs on the material pitted against the detenu. The case in hand reveals brazen and undiluted illegal activities/notoriety of the petitioner. We are therefore not inclined to apply the ratio laid down in that judgment.

18. It is expedient to disclose one more legal facet. It is common knowledge that order of detention passed under the Act would be challenged on various grounds comprising of delay, live link, procedural violation, violation of Article 22(5) of the Constitution of India, violation of principles of natural justice, subjective satisfaction, etc. It is difficult to comprehend all the grounds. Challenges on the ground of delay, violation of principles of natural justice or violation of Article 22(5) of the Constitution go to the root of the matter affecting power of the detaining authority. In such a situation, safeguard of Section 5A of the Act has no application. However, if the grounds of challenge are based on subjective satisfaction, propriety, sufficiency of incriminating material, Sec. 5A of the Act steps in. In such a situation, entire order of detention would not get vitiated, even if one or more grounds of challenge would have merit.

19. In the matter of Ganesh Vs. State of Maharashtra (supra), we upheld submission of delay which was issue going to the root of jurisdiction. In the case in hand, we have not accepted the ground of delay. Therefore by implication of Section 5A of the Act, in the present matter even if we accept submission on the point of absence of expert's opinion affecting subjective satisfaction, impugned order cannot be vitiated.

20. For the reasons recorded above, we dismiss the criminal writ petition. Rule is discharged.