

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5969 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

HEMA D/O SHYAM JIYO MAL SINDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR LR POOJARI, ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/02/99

ORAL JUDGEMENT

Through this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 7.7.1998 passed by the Police Commissioner, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA') and has prayed for quashing of the said order and

his immediate release from illegal detention.

From the grounds of detention it appears that the petitioner on the basis of registration of six cases under Bombay Prohibition Act and further on the basis of the statements of two confidential witnesses was adjudged by the Detaining Authority as bootlegger and his activities were found to be prejudicial for maintenance of public order. Accordingly, the impugned detention order was passed.

The learned Counsel for the petitioner has challenged the impugned order only on one ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. No other ground was pressed. However, from the counter affidavit of Shri J.R.Rajput, Under Secretary, Government of Gujarat another ground invalidating the grounds of detention has been placed before the Court. In para 3 of his counter affidavit it is mentioned that the representation dated 27.7.1998 sent by the Advocate of the detenu was returned by the Home Department on 31.7.1998 on the ground that the representation was neither bearing signature nor thumb impression of the detenu nor it was accompanied with vakalatnama or authority letter from the detenu. It is, therefore, manifest that the representation dated 27.7.1998 sent by the Advocate of the detenu was not considered by the State Government, rather, it was returned with technical objection which has no legs to stand. Once representation was sent by the Advocate under the instructions of the detenu the Advocate was not obliged either to annex authority letter or vakalatnama nor he was obliged to obtain signature or thumb impression of the detenu. Mere recital in the representation that it was being sent under the instructions of the detenu was enough compliance of law. Non consideration of representation of the detenu by the State Government has certainly violated fundamental rights of the petitioner contained under Article 22(5) of the Constitution of India, and on this ground alone, the impugned order of detention can be quashed.

The only ground pressed by the learned Counsel for the petitioner was that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. It, therefore, implies that subjective satisfaction of the Detaining Authority that the petitioner is bootlegger is not under challenge from the side of the petitioner nor it could be challenged in as much as six cases under Bombay Prohibition Act, were

registered against him and two confidential witnesses also stated about the activities of the petitioner connected with bootlegging. On this material, subjective satisfaction of the Detaining Authority that the petitioner is bootlegger requires no interference.

However, the subjective satisfaction of the Detaining Authority that the activities of the petitioner were prejudicial for maintenance of public order cannot be sustained. Regarding six cases under Bombay Prohibition Act, the apprehension of the Detaining Authority was that in view of past hooch tragedy, the petitioner's involvement in bootlegging activity having knowledge of the earlier hooch tragedy, such activity was dangerous to the public consuming liquor or country made liquor. This apprehension in the mind of the Detaining Authority was imaginary. There was no material that the liquor seized from the petitioner on either of the six occasions was spurious or contaminated with dangerous substance. Consequently, these six cases could not be considered to be sufficient material or even material for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order on these six occasions. There is no indication that during these six occasions the petitioner created any situation at the time of search and seizure, which was prejudicial for maintenance of public order.

So far as the two confidential witnesses are concerned there is no sufficient material in it for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The statements of the two witnesses are vague on material particulars and do not indicate in what manner the two witnesses were beaten. It is also not disclosed that any injury was caused to the two witnesses or that complaint of pain to anybody. No member of the public was injured. Thus, mere show of knife or pointed weapon to the members of the public cannot be said to have created situation where feeling of insecurity, alarm or danger was created in the locality. Thus, there was hardly sufficient material before the Detaining Authority to come to subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. Consequently, the impugned order is rendered invalid and illegal on this ground also.

For the reasons stated above, the impugned order of detention cannot be sustained and it has to be quashed. In the result, the writ petition succeeds and is hereby allowed. The impugned order of detention dated

7.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt