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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7503 of 1998

WITH  
CIVIL APPLICATION NO. 10341 OF 1998.

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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AMRUT KAUR W/O JAGDISHSINH SANTOKSINH

Versus

ANIL MUKIM

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Appearance:

NANAVATY ADVOCATES for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/05/1999

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. This petition under Article 226 of the Constitution of India challenges the order dated 6th August, 1998 made by the District Magistrate, Vadodara

under powers conferred upon him under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act']. Under the impugned order, one Jagdishsinh Santoksing Balla has been ordered to be detained under the Act. The order of detention has been challenged by one Amrut Kaur, the wife of the detenu-Jagdishsinh Santoksing Balla. The order of detention was followed by the Grounds of Detention. Amongst the other grounds urged by Miss Panchal, she has also contended that the impugned order of detention has not been made after arriving at the subjective satisfaction on the facts on record by the Detaining Authority, as it is expected of him. She has submitted that before making the order of detention, the Detaining Authority was required to come to a conclusion that for the reasons recorded, the detenu is required to be detained by preventive measure. However, in the instant case, the order of detention has been made on 6th August, 1998 and is supported by the grounds of detention recorded on 9th August, 1998. This fact is apparent not only from the grounds of detention; it has also been accepted by the Detaining Authority himself in its counter affidavit made in this petition. In support of this contention, she has relied upon the judgments of the Supreme Court in the matter of State of Bombay v. Atma Ram Shridhar Vaidya [AIR 1951 SC 157] and Shamim Rahmani, etc. v. State of U.P., [AIR 1975 SC 1883] and of Krishna Murari Aggarwala v. The Union of India & Ors., [AIR 1975 SC 1877].

In the matter of Atma Ram Shridhar Vaidya [Supra], the Court having considered the provisions contained in Article 22 of the Constitution of India held that, "...It is obvious that the grounds for making the order as mentioned above, are the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds, therefore, must be in existence when the order is made. By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts. The conclusions drawn from the available facts will show in which of the three categories of prejudicial acts the suspected activity of the particular person is considered to fall. These conclusions are the 'grounds' and they must be supplied. No part of such 'grounds' can be held back nor can any more 'grounds' be added thereto. What must be supplied are the 'grounds on which the order has been made' and nothing less." In the matter of Krishna Murari Aggarwala [Supra], the Court was considering the order of detention issued under the Maintenance of Internal Security Act, 1971. Relying upon Sec. 3 (1) of the said Act, the

Court held that, `.....Further more, since the order is based on grounds to be served on the detenu, the order of detention can be passed only if the grounds are in existence and are prepared contemporaneously, otherwise, the order of detention becomes purely illusory.'

In the present case, the power of preventive detention has been exercised under Sec. 3 of the Act. Sub-section 1 of Section 3 is in pari-materia identical with Section 3 (1) of the above referred MISA, 1971. The language of Sub-section 3 makes the legislative intention clear. The satisfaction of the Detaining Authority with respect to the suspicious activities of a person is the condition precedent for making the order of preventive detention under the Act. It is, therefore, imperative that before the order of detention is made, the Detaining Authority forms an opinion, on subjective satisfaction on the facts before him, that the order of detention is necessitated. On the facts of the present case, it is indisputable that the Detaining Authority has supported the order of detention by the grounds of detention, rather than making the order of detention, on the basis of grounds of detention. This, as stated by the Hon'ble Supreme Court in the matter of Krishna Murari [Supra], makes the order of detention illusory.

The petition is allowed. The impugned order of detention dated 6th August, 1998 is quashed and set-aside. The detenu-Jagdishsinh Santoksing Balla, unless required in some other case, be set free. Rule is made absolute. Civil Application No.10341 of 1998 is disposed of.

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Prakash\*