

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7798 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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MANOJKUMAR @ MAHENDRA ACHALAJIKHATRI (MARWADI) DETENUE

Versus

STATE OF GUJARAT

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Appearance:

MR SURESH M SHAH for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 5th September, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act,

1985 (hereinafter referred to as 'the Act').

The grounds of detention refer to four offences registered against the petitioner for violation of prohibition law. Out of the four offences registered against the petitioner, two are pending trial, and latter two were then pending investigation. In all the four cases, large quantity of illicit liquor was recovered. Over and above the said four offences registered against the petitioner, two persons have given statements before the police that the petitioner has been indulging in nefarious activities, carrying knife with him, and using the knife to intimidate the people who oppose him or who do not surrender to his demands. Further one more offence has been registered against the petitioner at Vatva Police Station being CR.No. II-3280/98 for offence punishable under section 279 IPC, and sections 187, 202, 207 of the Motor Vehicles Act. The petitioner is, therefore, considered to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are also found to be prejudicial to the maintenance of public order.

Learned advocate Mr. Shah has appeared for the petitioner, and has attacked the order of detention on four grounds. He has submitted that the order is vitiated for clear non-application of mind. The Detaining Authority has not considered other remedies which were available to him to prevent the petitioner from indulging into criminal activities. Besides, he has assumed that such remedies would not be adequate. The subjective satisfaction recorded by the Detaining Authority is also vitiated since the Detaining Authority has not verified the credibility of the witnesses and the statements made by the witnesses. Besides, no activity of the petitioner can be said to be detrimental to the maintenance of public order. Further the Detaining Authority has relied upon extraneous material i.e. the material which is not supplied to the petitioner, nor has been referred to in the grounds of detention. It is submitted that the petitioner is a transport operator, and is alleged to have provided vehicles for transportation of illicit liquor. The petitioner may have committed an offence which may amount to breach of law and order, however, the same can not disturb the even tempo of life or public tranquility. The provisions of the Act, therefore, could not have been invoked against the petitioner. In support of his contention, Mr. Shah has relied upon the judgments of this court in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS STATE OF GUJARAT & ORS (1995 (2) GLR 1134); MOHMAD SARIF @ KAHU

NURMOHMADSAMIBAPU SHAIKH VS COMMISSIONER OF POLICE AHMEDABAD & ORS. (1997 {1} GLH, 1017); AMRUT RAMABHAI VAGHARI VS COMMISSIONER OF POLICE, AHMEDABAD & ORS (1995 {2} GLH 874; and OMPRAKASH VS COMMISSIONER OF POLICE & ORS. (AIR, 1990, SC 496).

The petition is contested by the learned AGP Ms. Punani. She has submitted that the activities of the petitioner are sufficient to bring him within the meaning of 'bootlegger' as defined in section 2 (b) of the Act. Further, his activities are such which would affect the public tranquility and even tempo of life. Thus, the petitioner is not only indulging into bootlegging, his activities also affect the public order. The material on which the subjective satisfaction is arrived at is sufficient to warrant a detention order. In support of her contention, she has relied upon the judgment of the Supreme Court in the matter of MRS. HARPREET KAUR HARVINDER SINGH BEDI VS STATE OF MAHARASHTRA & ORS (AIR 1992, SC 979).

In the matter of Zubedabibi (supra), this court has considered the scope of section 437 (5) Cr.PC. It is held that the court has a wide power to cancel the bail granted or refuse the same under section 437 (5) Cr.PC. The Detaining Authority could have availed of the said provision and have applied for cancellation of bail or could have opposed the grant of bail. The subjective satisfaction recorded without availing the aforesaid remedy was held to have been vitiated. In the matter of Mohamad Sarif (supra), this court, on facts, found that the authority did not apply mind to the statements of the witnesses recorded by the subordinate officer. The grounds of detention did not disclose that the said statements were verified to be true and that the credibility of the witnesses was examined, nor was an affidavit filed before the court by the Detaining Authority as to whether the detention order had been passed after due and active application of mind on the entire material. Nor was there any contemporaneous evidence taken note of and considered by the Detaining Authority. In the matter of Amrut Vaghari (supra), this court relying upon the earlier Supreme Court judgment, held that the statements made by the witnesses do not reflect upon the activities carried on by the petitioner which would have an adverse effect on the public order. In the matter of Om Prakash (supra), the Hon'ble Supreme Court relying upon its earlier judgment in the matter of Piyush Kantilal Mehta VS Commissioner of Police (AIR,

1989, SC 491), held that the material available on record in that case was not sufficient and adequate for holding that the prejudicial activities of the detenu had either affected adversely or likely to affect adversely the maintenance of public order within the meaning of section 3 (4) of the Act. In the matter of Harpreet Kaur (supra), the detenu was found to be transporting illicit liquor, and when signaled to stop, tried to run away and in the process hit the pedestrian and a stationary vehicle, also terrorised the people and exhorted them that whosoever came in his way, would be killed. On the facts, the court did find that activities of the detenu were detrimental to the maintenance of public order.

Mr. Shah has relied upon the assertions made by the Detaining Authority in his affidavit that he had carefully examined and considered the material placed before him including the papers pertaining to the criminal cases and the statements of the witnesses. It is contended that this statement is sufficient to infer that the Detaining Authority had some material over and above the material regarding the four cases registered against the petitioner and the statements made by the witnesses. If there were some material before the Detaining Authority, same had not been provided to the petitioner and, therefore, the order of detention should be vitiated. I see no substance in this contention. I have perused the records and I find that no material other than the one which is supplied to the petitioner had been considered or relied upon by the Detaining Authority. What is stated in the affidavit is a mere way of expression and can not be inferred that the extraneous material has been taken into consideration, which is not provided to the petitioner. It does appear that in the four offences, the petitioner was not named as an accused in the concerned FIR. However, the fact remains that upon investigation, the petitioner's name has been included as one of the accused persons. Even if it is believed that the petitioner had played no role other than supplying vehicles for transportation of the illicit liquor, the petitioner still would be a 'bootlegger' within the meaning of section 2 (b) of the Act. If on facts, the petitioner's activities are found to be prejudicial to the maintenance of public order within the meaning of sub-section (4) of section-3 of the Act, and the explanation thereto, the petitioner could be lawfully detained under the Act.

Coming to the facts of the present case, not only the petitioner has been indulging into bootlegging

activities, he also maintains a lethal weapon (knife) and carries it along with him. In the offence registered under the Motor Vehicles Act, the petitioner was found to be driving a vehicle in a reckless manner at a high speed in Vatva at around 3-00 O'clock in the afternoon. When the police signaled him to stop, he tried to run away, and he had to be chased to stop, and was found to be carrying a large sum (Rs.1,80,000) for which he had no explanation. He has made a statement before the police and has admitted that the said amount was to be shared by accomplices in the prohibition offence. He has also explained that having seen the police, he became apprehensive of being caught, therefore, tried to run away. Be that as it may, the fact remains that the petitioner was having ill-gained money and was driving the vehicle in a reckless manner at a high speed and tried to run away, the police had to chase him in the heart of the industrial area of the city. The statements made by the witnesses also reveal that in the course of his nefarious activities, the petitioner tries to terrorise the persons who do not surrender to his demands and by beating the said persons in public place tries to create terror. The statements of the witnesses have been personally verified by the Detaining Authority on 5th September, 1998. In his affidavit also, the Detaining Authority has categorically stated that he had carefully examined and considered all the material and had personally verified the genuineness and correctness of the statements of the witnesses. Should this be considered to be sufficient for making the basis of subjective satisfaction. In the matter of Mohamad Sarif (supra), this court found that the veracity of the statement and credibility of the witnesses was not examined by the Detaining Authority personally, nor had he recorded his subjective satisfaction, nor had it been mentioned by filing an affidavit, nor there was any contemporaneous evidence to show that the genuineness of the statements was examined. In absence of all these four tests, the court held that " the Detaining Authority has to apply its mind and such application of mind must be made manifest in the body of the order itself and in any case when it is alleged that the order had been passed without application of mind, it must be shown before the court by way of filing the affidavit or otherwise on the basis of some contemporaneous evidence and the reasons which can be said to be germane so as to warrant the detention." On the facts of the present case, as it is referred to hereinabove, the Detaining Authority has personally verified the statements made by the witnesses and has also categorically stated on affidavit that he had personally examined the material before him

and was personally satisfied about the genuineness and correctness of the statements of the witnesses. In my view, even applying the principle laid down in the above referred judgment in the matter of Mohamad Sarif (supra), the subjective satisfaction recorded by the Detaining Authority can not be held to be vitiated. In the matter of Om Prakash (supra), the court found that the facts there were not as grave as the one in the matter of Piyush Kantilal Mehta and the activities of the detenu did not affect the public order. On the facts of the present case, the said judgment, therefore, can not have applicability. In the matter of Harpreet Kaur (supra), true, the facts were far graver than the facts in the present case. In the said case, the detenu tried to run away and in the course tried to run over the police, hit the pedestrian and a stationary van, He also threatened the passers-by of killing if they came in his way. Ultimately on arrest he was found to be transporting liquor and possessing weapons also. The court, therefore, found that his activities were detrimental to the public order.

In the present case, as referred to hereinabove, four prohibition cases have been registered against the petitioner, and large quantity of illicit liquor has been recovered in each of the incidents. Both the witnesses have stated that the petitioner dragged the said witnesses to a public place, beat them in public place, that he was carrying weapon (knife) and was terrorising the people. He also tried to run away and had to be chased by the police. All these facts, according to me, lead to a conclusion that the petitioner's activities are prejudicial to the maintenance of public order within the meaning of sub-section (4) of section 3 of the Act and the explanation thereto so as to warrant an order of detention.

It is true that the prosecution, under section 437 (5) Cr.PC can move a court for cancellation of bail, and can also oppose the bail application that may be made by the accused. However, should the availability of that remedy alone be fatal to the order of detention. In the matter of Zubedabibi (supra), the court, on facts, found that the question was not considered by the Detaining Authority at all. There had been a non-application of mind not only qua the statutory provisions, but also qua the factual aspects of the case. On the facts of the present case, it can not be said that the Detaining Authority was not alive to the remedy available under section 437 (5) Cr.PC. However, the said remedy is not found to be adequate to keep the petitioner away from his

nefarious activities. In my view, the subjective satisfaction arrived at by the Detaining Authority can not be vitiated on that ground also.

For the reasons recorded hereinabove, the petition is dismissed.

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JOSHI