

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 575 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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? : NO

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ANILKUMAR ALIAS CHACHU JAGDISHPRASAD AGARWAL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

#. The petitioner - Anilkumar @ Chachu Jagdishprasad Agrawal, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(1) of the PASA Act, dated January 3, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration 5 offences registered against the petitioner with different police stations. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on December 30, 1999 and January 1, 2000, which were verified by the detaining authority on 3rd January, 2000 and the order of detention is passed on January 3, 2000. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses in the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detainee while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detainee of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (*BAI AMINA v. State of Gujarat & others*, 1981 GLR 1186 and *Kalidas Chandubhai Kahar v. State of Gujarat & ors.*, 1993 (2) GLR 1659).

#. So far as the registered offences are concerned, CR No. 391/98 is in relation to incident dated October 9, 1998 and the order of detention is passed in January, 2000. That would, therefore, be a stale ground. So far as CR No. 987/99 is concerned, according to the petitioner, cross case was lodged by the detainee, a copy of which though demanded has not been supplied. This fact is not disputed by Mr. K.T.Dave, learned AGP. So far as the rest of the registered offences are concerned, namely CR No. 184/99, 195/99 and 5023/99, some of the documents supplied to the detainee are not legible. This Court has inspected the same. Mr. Dave has also inspected the same and there appears substance into what is contended by the learned advocate for the petitioner. Therefore, the right of the detainee of making an effective representation is adversely affected in respect of all the registered cases except CR No. 391/98. The petition, therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated January 3, 2000 is hereby quashed and set aside. The detainee - Anilkumar @ Chachu Jagdishprasad

Agrawal, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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