

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 699 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

ABHESING MANGA RATNA VASAVA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

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

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. The petitioner - Abhesing Manga Ratna Vasava, 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 District Magistrate, Bharuch, in exercise of powers under Section 3(1) of the PASA Act, dated December 24, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 4 offences registered against the petitioner. The detaining authority also took into consideration the statements of three 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. Learned advocate Mr. Tirmizi has submitted 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 three anonymous witnesses were recorded on 11.12.99, 14.12.99 and 15.12.99, which were verified by the detaining authority on December 22, 1999 and the order of detention is passed on December 24, 1999. Therefore, there is improper exercise of powers under section 9(2) of the PASA Act.

#. Ms. Patel further submitted that the detaining authority has not considered the statements recorded under section 161 of the Code of Criminal Procedure by the Investigating Agency. This would vitiate the detention. This would also infringe the right of the detainee of making an effective representation (Jiva Veiyapuri Madrasi v. Commissioner of Police, 1991 [1] GLH 346).

#. Ms. Patel further submitted that the representation made on behalf of the detainee to the State Government on February 2, 2000 is considered late. It is submitted that the said representation dated February 2, 2000 was received by the State Government on 5th February, 2000 and decided on 8th February. Therefore, there is delay of three days. It is further contended that the copy of FSL report is not supplied in respect of the registered cases.

#. 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).

#. Apart from this, there is delay in communication of the decision of the government on the representation. This is reflected from the communication served on the detainee. The communication is dated February 8, 2000, which is received by the jail authority on March 2, 2000 and served on the detainee on March 3, 2000. The decision on the representation, therefore, is late by about 22 days. This delay is not explained. No affidavit-in-reply is filed. This amounts to infringement of the right of making an effective representation. The continued detention is therefore, rendered bad in law. The petition therefore, deserves to be allowed on this ground. Other arguments are not required to be dealt with for the foregoing reasons which are sufficient to allow the petition and quash the order.

#. In view of the foregoing reasons, the petition is allowed. The impugned order of detention dated December 24, 2000 is hereby quashed and set aside. The detainee - Abhesing Manga Ratna Vasava, 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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