

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8650 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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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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CHETAN JAYANTILAL SHAH

Versus

COMMISSIONER OF POLICE  
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Appearance:

MS.BANNA DATTA,L.A. for MR ANIL S DAVE for Petitioner  
MR.UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of order of detention dated 5th July, 2000, with respect to detenu passed by respondent No.1 in exercise of powers conferred

upon him under Sec.3(2) of the Prevention of Antisocial Activities Act, 1985 (In short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person" within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on three IPC Cases lodged in Navrangpura Police Station of Ahmedabad City against the detenu which are referred to in the grounds of detention and all the three cases are pending with the Investigating Officer for investigation. Out of that three cases, last case was lodged on 24th May, 2000, and thereafter order of detention came to be passed on 5th July, 2000. That order has been challenged in this writ petition.

3. Though Rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms.Banna Datta, learned advocate for the petitioner has argued that in view of Sec.9(1) of the Act, the detaining authority is required to communicate the grounds on which the order is made, to the detenu within 7 days from the date of detention. This Sec.9(1) of the Act also requires the detaining authority to afford the detenu an earliest opportunity for making effective representation to the State Government. Ms.Banna Datta, learned advocate for the petitioner has drawn my attention to documents on page 63 and page 295 of the papers relating to the grounds of detention. On mere look to these two documents, it can be said that these two documents are completely illegible. Some figures can be read but the entire document cannot be read in each case, and therefore, the detaining authority has not afforded full opportunity to the detenu and therefore mandate given under Article 22(5) of the Constitution of India is prima facie violated. Under the circumstances, the order of detention is bad in law, and illegal and it requires to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dated 5th July, 2000 (Annexure 'A') passed by respondent No.1 with respect to detenu is quashed and set aside. The petitioner-detenu is ordered to be released forthwith, if he is not required to be detained further for any

criminal case or proceedings. Rule is made absolute.  
Direct service is permitted.

(H.H. Mehta, J.)

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