

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3970 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
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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BABIBEN W/O JIVANBHAI

CHHANABHAI PATEL

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR ANIL S DAVE for Petitioner

RULE SERVED for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard Mr. Anil S. Dave, learned advocate for the  
petitioner and Mr. A.J.Desai, learned AGP appearing for  
respondents No. 1, 2 & 3.

#. The detention order dated 26-5-99 passed by

respondent No. 2 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that a prohibition case vide C.R.No : 451 / 99 is registered against the petitioner at Surat City (South) Prohibition police station on 9-3-99 and country made liquor as well as the instrument for distilling the liquor were seized from the place raided by flying squad. Furthermore, two witnesses on assurance of their anonymity have given statement dated 20-4-99 and 25-4-99 regarding the bootlegging activities of the petitioner and referring the incidents alleged to have been occurred on 21-3-99 and 8-4-99 respectively. The said statements were verified by the detaining authority on 25-5-99. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that a prohibition case on which the detention order is based is registered on 9th March, 1999 and the anonymous information was recorded on 20th April, 1999 and 25th April, 1999, the impugned action against the petitioner has been taken by passing the order on 26-5-99. That the grounds of detention is devoid of any explanation for the said delay. Furthermore, the detaining authority has failed to consider the aspect of less drastic remedy claiming cancellation of bail as available under Section 437(5) of CrPC.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. It is further observed by the Hon'ble Supreme Court that inordinate delay in taking action for detention from the date of actual commission

of anti social activities if not satisfactorily explained, is fatal to the validity of the order. Even this Court also in the matter of ELESHE PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also expressed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonable explanation for delayed action, the detention order cannot be sustained.

#. In in the instant case also, as stated hereinabove, the grounds of detention is devoid of any explanation, as to why the action has been delayed till 26-5-99 though the criminal case has been registered on 9-3-99 and further information was received on 20-4-99 and 25-4-99. That no affidavit has been filed by either of the respondents despite due service and as such, in the absence of any casual connection between the alleged anti social activities and the impugned action taken, it is difficult to uphold the impugned order.

#. That, furthermore in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it is found that the detaining authority while formulating the grounds has observed that the detenu / petitioner was released on bail and having remained on bail, in all probabilities, she is likely to continue her bootlegging activities and as such, detention order is necessary.

#. Thus, the abovesaid observation of the detaining authority clearly suggests that the impugned order is passed on apprehension rather than the fact. That there is non consideration of less drastic remedy like claiming cancellation of bail under Section 437(5) of CrPC and thereby also, the impugned order cannot be sustained.

##. As the petition succeeds on the aforesaid grounds

alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 26-5-99 passed by respondent No.1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - SMT. BABIBEN W/O JIVANBHAI CHHANABHAI PATEL is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 31-1-2000 [A.K.Trivedi, J.]

#kailash#