

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4497 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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MOHAMMED RAFIQ ABDUL REHMAN MEMON

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner

Mr. K.T. Dave, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

Leave granted to the petitioner to place on  
record the bunch of documents supplied to the detenu as  
accompanying documents to the order of detention.

1. The order of detention dated 28-4-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Sec.3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner-detenu under Section 9(1) of "PASA", copy of which is produced on record at running page 19 of the compilation inter alia indicate that Prohibition Case bearing CR no.5024/99 was registered against the petitioner at Kalupur Police Station on 18-4-1999 and Indianmade foreign liquor was seized from the possession of the petitioner. The said case is pending investigation.

3. Furthermore, three witnesses on assurance of their anonymity have given their statement on 28-4-1999 regarding bootlegging activity of the petitioner and have narrated incidents alleged to have occurred on 10-4-1999, 14-4-1999 and 16-4-1999 respectively.

4. That in consideration of the aforesaid material, the responding no.2-detaining authority has come to the conclusion that the petitioner 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 bootlegging activity, and as such, the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds. It has been submitted at the Bar on behalf of the petitioner that the impugned order is bad in law on account of non application of mind on the part of the detaining authority, inasmuch as while formulating the grounds of detention, the detaining authority has observed that in the year 1997-98, the petitioner was found to indulge into activity disturbing the public order, and as such, vide Order no.4/97 dated 3-1-1997 and Order no.139/98 dated 5-6-1998, the detenu was detained under the provisions of "PASA". That the said fact have been referred to only with a view to consider the past conduct of the petitioner. It is submitted on behalf of the petitioner that facts stated in the said statement being incorrect, the petitioner made representation dated 25-9-1999 claiming the copy of the said order and accompanying documents. The copy of the representation is produced on record vide running page 28 of the compilation. It is further submitted on behalf of the

petitioner that despite the said representation, no documents have been supplied to the detenu nor any reply has been given. That the said contention has been raised in the petition by way of amended paragraph 4(v). Furthermore, the documents supplied to the detenu alongwith the order of detention vide page 43 bears order no.4/97 dated 3-1-1997. Learned Advocate for the petitioner has submitted that said copy appears to be the detention order referred to by detaining authority in the penultimate paragraph of the grounds of detention. However, on perusal, the said order appears to have been passed against one Mohammed Rafiq Abdul Rahim Shaikh while the name of the petitioner-detenu is Mohammed Rafiq Abdul Rehman Memon. Therefore, the documents supplied vide page 43 cannot be said to be the alleged order of detention referred to by the detaining authority in the grounds of detention. Similarly, another document supplied vide page 57 bears Order no.139/98 dated 5-6-1998. It is also a detention order passed against one Mohammed Rafiq alias Rafiq Abdul Rehman Memon. Thus, out of the two documents referred to by the detaining authority in the grounds of detention, one of the documents not being relevant and factually incorrect has deprived the petitioner-detenu from making effective representation against his detention. Furthermore, the detaining authority having failed to reply the representation dated 25-9-1999 has committed violation of the mandate contained in Article 22(5), and as such, the continued detention of the petitioner being illegal, the impugned order is required to be revoked.

6. In consideration of the above stated analysis of fact, it prima facie appears that grounds of detention served to the detenu contained a factually incorrect statement and despite the demand made by representation, the respondent-authority has failed to supply the same or clarify the statement made in the grounds of detention which clearly amounts to violation of the mandate contained vide Article 22(5) of the Constitution which makes the continued detention illegal.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 28-4-1999 which could be executed on 22-5-1999 on the petitioner issued by the respondent no.2-Commissioner of Police, Ahmedabad is hereby revoked and the petitioner-Mohammed Rafiq Abdul Rehman Memon is ordered

to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

8.1 It is submitted at the Bar that pending final hearing of the petition, the petitioner-detenu is transferred to the District Jail, Rajkot, and thereby, it is necessary to send writ of this order to the Superintendent, District Jail, Rajkot also. Hence, order accordingly.

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