

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6066 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
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

PURSHOTTAM ALIAS PURSHOT PARSURAM RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE ASST GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard Mr.Satish R. Patel, learned advocate for the petitioner and Mr. K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 24-5-99 passed by

respondent No. 1 - The Commissioner of Police, Ahmedabad 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 indicates that a prohibition case has been registered against the petitioner at Nashabandhi police station (East) on 17-1-1999 and country made liquor along with one Tata 407 car were seized from the petitioner / detenu. That the said matter is pending for further investigation. Over and above that, two witnesses on assurance of their anonymity have given statements dated 24-5-99 against the bootlegging activities of the petitioner referring to the incidents alleged to have occurred on 30-4-99 and 5-5-99 respectively. That the said statements were verified by the detaining authority on 24-5-1999.

#. That on the basis of the aforesaid material, respondent No : 1 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner is a bootlegger within a meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social 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 the impugned order is bad in law on account of the non application of mind inasmuch as on the date of the passing of the impugned order, the petitioner was in police custody in respect to criminal case registered against him. However, without considering the aspect of less drastic remedy like opposing the bail or claiming of cancellation of bail under Section 437(5) of the CrPC, the detaining authority has passed the impugned order; and thereby, the subjective satisfaction reached by the detaining authority having been vitiated and has rendered the impugned order invalid.

#. That 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.).

#. On scrutiny of material particularly, the grounds of detention, it appears that the detaining authority while formulating the grounds has observed that the petitioner / detenu was in police custody in respect to a case registered against him. However, by passage of time, the petitioner is likely to move a bail application and having got himself released on bail, is likely to continue his anti social activities which would disturb the public order. That the said averments prima facie, suggests that the impugned order has been passed on apprehension rather than the fact collected and produced before the detaining authority. That it also suggests that the detaining authority has failed to consider the aspect of claiming of cancellation of bail if granted, under Section 437(5) of CrPC, as a result, it is difficult to uphold the order.

#. As the petition succeeds on the aforesaid ground 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 24-5-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - PURSHOTTAM ALIAS PURSHOT PARSURAM RAJPUT 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#