

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6650 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 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

NASREEN MOND.IMTIYAZ GORUMIYANANSARI WIFE OF DETENU

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR NM KAPADIA for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. N.M.Kapadia for the petitioner and learned AGP Mr. A.J. Desai for the respondents nos.1, 2 and 3.

1. The petitioner-Nasreen Mohd. Imtiyaz Gorumiyan

Ansari has filed the present petition under Article 226 of the Constitution to challenge the detention order dated 5-8-1999 passed against her husband-Mohammed Imtiyaz alias Lali Gorumiyan Ansari by the respondent no.1-Commissioner of Police, Surat in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that a Prohibition Case vide CR no.5125/99 was registered at DCB Police Station against the detenu on 22-4--1999 wherein Indianmade foreign liquor was found and seized from the possession of the petitioner. That the case is pending for trial in Court.

2.1 The grounds further indicate that two witnesses on assurance of their anonymity vide their statement dated 30-6-1999 have supplied information regarding the bootlegging activities of the detenu and have related alleged incidents dated 2-6-1999 and 19-6-1999 respectively.

3. That in consideration of the aforesaid material, the detaining authority has come to the conclusion that the detenu is a " bootlegger" within the meaning of Sec.2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activity, the detention order is necessary, and hence, the impugned order is passed.

4. The petitioner has challegned the impugned order on numerous grounds. It is contended on behalf of the detenu that on account of non explanation of delay in taking action of passing the detention order after the live link between the alleged antisocial activity and the action taken having been snapped, the detention order is bad in law. It is submitted that the case registered against the detenu on which the detention order is passed, is registered on 22-4-1999 and the detenu was arrested on 28-4-1999 and released on bail on 1-5-1999. That information through anonymous witnesses was received vide statement dated 13-6-1999 and yet action of passing the detention order is taken on 5-8-1999 without any explanation for the delay.

5. In the matter of PRADEEP NILKATNH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656) having followed the earlier decisions, the Supreme Court has held that if

the delay in taking the impugned action from the last date of antisocial activity of the detenu is not sufficiently explained the order is vitiated and cannot be sustained. That the same proposition has been reiterated by this Court in the matter of ELESHPATEL VS.C.P. AHMEDABAD reported vide 1997(1) G.L.H.381.

6. On scrutiny of the grounds of detention, it appears that the grounds of detention is devoid of any material to explain the delay in taking action from 30-6-99 to 5-8-1999. That despite due service of rule, none of the respondents have filed affidavit-in-reply to controvert the averments made in the petition, and as such, there being no explanation on record for the inordinate delay which has occasioned, the impugned order could hardly be sustained.

7. As the petition succeeds on the aforesaid ground alone 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 5-8-1999 passed by the respondent no.1 against the detenu is hereby quashed and set aside. The detenu-Mohammed Imtiyaz alias Lali Gorumiya Ansari is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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