

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9558 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

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BHAVESHBHAI @ BHAVLO HARIBHAI CHAUHAN

Versus

COMMISSIONER OF POLICE  
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Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

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

#. The detention order dated 31-5-1999 passed by respondent No. 1 - The Commissioner of Police, Rajkot City 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 proceedings 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 running page 16 to 23 interalia indicate that the petitioner is alleged to have been involved in three prohibition cases registered at Rajkot "B" Division Police Station on 28-7-98, 26-10-98 and 9-2-99 respectively. That in each case country made liquor has been seized and the cases are pending for trial in the Court.

Over and above, that two witnesses on assurance of their anonymity have given their statement dated 30-5-99 wherein, the incidents alleged to have been occurred on 19-3-99 and 14-4-99 are stated. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Rajkot City 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 the detenu has not been supplied with the copies of the FIRs, Panchnama and FSL report in respect to cases registered vide C.R. Nos : 20/95, 73/97, 171/97, 184/97 and 301/97. Furthermore, the petitioner had made representation dated 5-10-99, a copy of which is produced on record with postal receipts and acknowledgment. It is contended vide para 10 that the said representation has not been disposed of expeditiously which has violated the constitutional mandate under Article 22(5) and as such the continued detention of the petitioner becomes illegal.

#. It is pertinent to note that despite due service of rule, none of the respondents has filed any affidavit to controvert the statement made in the petition. Under these circumstances, I am constrained to record findings of fact that non supply of particular documents, has not

been controverted or explained and similarly, non consideration of the representation as soon as possible is also not replied to. Under these circumstances, the constitutional mandate under Article 22(5) having been breached, the continued detention of the petitioner is rendered illegal and as such also, the impugned order is required to be quashed and set aside.

#. 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 31-5-1999 passed by respondent No. 1 - The Commissioner of Police, Rajkot City against the petitioner is hereby quashed and set aside. The petitioner BHAVESHBHAI @ BHAVLO HARIBHAI CHAUHAN is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 29-2-2000 [A.K.Trivedi, J.]

#kailash#