

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9798 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

MUNNA @ MANU ABHESINH DARBAR SOLANKI

Versus

COMMISSIONER OF POLICE

Appearance:

MR CHETAN B RAVAL for Petitioner
MR AJ 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.A.M.Parekh for learned advocate Mr.Chetan B. Rawal on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 7-5-1999 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 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 15 to 19 interalia indicate that the petitioner is involved in three prohibition cases registered at Odhav Police Station on 29-8-98, 2-10-98 and 5-10-98 for the offences made punishable under Bombay Prohibition Act and country made liquor has been seized in each of the case. That all three cases are pending for trial in the Court.

#. It further indicate that the petitioner is also involved in other six cases registered at Nashabandhi Station (East Division) which are registered vide C.R.Nos : 181/99, 288/99, 340/99, 347/99, 348/99 and 395/99 on 19-2-99, 22-3-99, 9-4-99, 12-04-99 and 28-4-1999 respectively. That in each case country made liquor has been seized and all the six cases are pending for further investigation.

#. Over and above, two witnesses on assurance of their anonymity have given their statement dated 3-5-99 and 5-5-1999 respectively regarding the bootlegging activities of the petitioner wherein, the incidents alleged to have been occurred on 20-3-99 and 18-2-1999 are stated respectively. That on the basis of the said material, the respondent No. 1- The Commissioner of Police, Ahmedabad 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 petitioner was arrested in respect to three cases registered at Odhav Police Station on 2-9-98, 28-10-98 and 28-10-98 respectively. That the petitioner was released on bail on 2-9-1998 and 28-10-98 respectively. However, the

petitioner was in judicial custody in respect to remaining six cases pending against the petitioner and was arrested on 6-5-99. That the detaining authority while passing the impugned order, has failed to consider the aspect of claiming cancellation of bail in pending cases against the petitioner before passing the impugned order. That on account of the said non application of mind, the impugned order is rendered 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.).

#. In the instant case, on scrutiny of grounds of detention, it appears that the detaining authority has observed in last but one para that the detenu is on bail in respect to cases registered at Odhav Police Station but is in judicial custody in respect to cases registered at Nashabandhi (East Division) Police Station and in all possibility, the petitioner could apply for bail in the said cases and having got himself released on bail, is likely to continue his prejudicial activities and as such, to prevent the detenu immediately, the detention order is necessary. The said observation itself suggests that the detaining authority has failed to consider claiming of cancellation of bail in pending cases against the petitioner as available under Section 437(5) of CrPC before passing the impugned order. That thereby on account of the said non application of mind, it is difficult to sustain the order. It may be noted that despite due service of rule, none of the respondents has filed affidavit to explain the said contention which is taken vide amended para 16(1) of the petition.

#. As the petitioner could be disposed of on the above stated 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 7-5-99 passed by respondent No. 1 - The Commissioner of Police,

Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - MUNNA @ MANU ABHESINH DARBAR SOLANKI 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.]

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