

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5145 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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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

AALJIBHAI DALABHAI SOLANKI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 5145 of 2001
MS DR KACHHAVAH for Petitioner No. 1
MR KT DAVE AGP for Respondents No. 1-3
-

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/10/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Surendranagar vide order dated April 16, 2001, Annexure A to the

petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act as six cases under the Prohibition Act are registered against the petitioner which are either pending for investigation or trial and statements of two anonymous witnesses are also recorded in unregistered cases and, therefore, according to the detaining authority, the activities of the petitioner are prejudicial to the maintenance of public order and public health and the powers under Section 9 (2) of the Act are exercised by the detaining authority while detaining the petitioner by not disclosing the identity of those witnesses.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting the petitioner at liberty forthwith.

4. Ms. Kachhavah, learned advocate for the petitioner has raised following contentions:

(i) There is a delay in passing the order of detention without recording satisfactory explanation on the part of the detaining authority. The first five offences registered against the petitioner are of 1999 or 2000 and, therefore, they are very old cases and on the basis of the said cases it cannot be said that the petitioner has involved in such activities which are prejudicial to the maintenance of public order or public health. So far as the last offence registered against the petitioner on 3.2.2001 is concerned, it is also an old one as the impugned order of detention is passed after a period of more than two months, that is, on April 16, 2001 without explaining the delay by the detaining authority.

(ii) So far as the 5th case is concerned, copy of the report of the chemical analyzer supplied to the detenu is illegible which has adversely affected the petitioner's right of making an effective representation to the authority concerned and infringement in this regard violates the constitutional safeguard enshrined under Article

22 (5) of the Constitution of India.

(iii) Exercise of powers under section 9 (2) of the Act by the detaining authority cannot be said to be genuine in the absence of reply affidavit filed by the detaining authority.

On the aforesaid premise, she urged that the order of detention stands vitiated and the petition deserves to be allowed and the petitioner is required to be set at liberty forthwith.

5. Mr. K.T. Dave, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. He, however, does not dispute the fact that out of six cases, five cases are registered in the year 1999 or 2000 and therefore they are very old cases. He also does not dispute the fact that copy of the chemical analyser's report in relation to 5th case supplied to the detenu is illegible. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order and more particularly the grounds of detention, it is seen that against the petitioner six offences came to be registered under the Prohibition Act. Out of these six offences, first five offences are of 1999 or 2000. Therefore they are very old cases. So far as the 6th offence registered against the petitioner is concerned, it came to be registered on February 3, 2001 whereas the impugned order of detention came to be passed on April 16, 2001. Therefore, it can be said that the order of detention was passed after a period of about 2 1/2 months. The aforesaid delay has not been explained by the detaining authority.

8. In the case of Anand Prakash v. State of UP, AIR 1990 SC 516 - it has been held that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

7. Similar view is expressed by this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, 1997 (1) GLH 381.

8. Applying the principles enunciated by the Supreme Court and this Court in the above cited judgments to the facts of the present case, it is clear that the first five offences are very old whereas the last offence came to be registered on February 3, 2001 and the order of detention came to be passed on April 16, 2001 and therefore there is a delay of about 2 1/2 months in passing the impugned order of detention from the date of registering the last offence. Therefore on the ground of unexplained delay the order of detention impugned in this petition stands vitiated and on this ground alone the petition deserves to be allowed.

9. It is also seen from the record of the case that page 83 which is a copy of the report of chemical analyzer in relation to 5th offence supplied to the detenu is illegible which also adversely affected the right of the petitioner of making an effective representation and infringement in this regard has violated the constitutional safeguard enshrined under Article 22 (5) of the Constitution and therefore on the ground of non-supply of legible copies of the documents the impugned order of detention is liable to be quashed and set aside.

10. Lastly, the privilege claimed under Section 9 (2) of the Act by the detaining authority by not disclosing the identity of the witnesses cannot be called genuine in the absence of affidavit in reply filed on behalf of the detaining authority. Therefore, on this ground also the impugned order of detention deserves to be quashed and set aside.

11. On overall view of the matter, the order of detention stands vitiated and the petition deserves to be allowed.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)
