

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7088 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GOHIL VIRAMDEVSINH PRABHATSINH

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 7088 of 2001
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MRS HANSABEN PUNANI, AGP for Respondents No. 1-3
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the
provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as 'the Act of 1985') by the order dated 20-3-2001 passed by the District Magistrate, Bhavnagar, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, for passing the detention order the detaining authority has relied upon three offences registered against the detenu. It is submitted that the detenu has demanded by way of a representation dated 20-8-2001 to the detaining authority to supply certain documents including statement in connection with accused No.2 but same have not been supplied and, therefore, it is a point which is required to be taken into consideration.

4. It has been held in a judgment reported in AIR 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors. at head note as under:

"Detention-Documents relied on by authorities not supplied with grounds of detention-Detention is illegal."

It has been further held by the Apex Court as under:

"It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, copy of the statement in connection with accused No.2 and other statements though relied upon by the authority in passing the impugned order of detention, have not been supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions

of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 20-3-2001 passed against the detenu is hereby quashed and set aside. The detenu Gohil Viramdevsinh Prabhatsinh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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