

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2362 of 2002

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

ANIL AMRUTLAL JOSHI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2362 of 2002
MS BANNA S DUTTA for Petitioner No. 1
MR ANIL S DAVE for Petitioner No. 1
MS HANSA PUNANI AGP for Respondents No. 1-3
RULE SERVED BY DS for Respondents No. 1-2
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/03/2002

ORAL JUDGEMENT

The petitioner is detained u/sec. 2 (b) of the
Gujarat Prevent of Anti-Social Activities Act, 1985
(hereinafter referred to as the "PASA Act"), by the order

dated 25-10-2001 passed by the Police Commissioner, Ahmedabad City with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order in the area pertaining to Prohibition Squad Police Station, Northern Region, Ahmedabad city and in exercise of the powers conferred u/s 3 (2) of the PASA Act.

2. The petitioner was served with a copy of the impugned order of detention on the same day and he was supplied the copy of the grounds of detention along with the necessary documents, against which the petitioner has made a representation on 30-1-2002 through his advocate. However, the same has not been considered by the authority concerned and therefore the petitioner has approached this Court by way of filing the present petition under Article 226 of the Constitution of India raising so many grounds. Initially, the notice of Rule was issued and it was made returnable considering the date of the detention.

3. I have heard learned advocate Ms. Banna Datta for Mr. Anil S. Dave for the petitioner and Mrs. Hansaben Punani, learned A.P.P. for the respondents.

4. It reflects from the records of this case that no affidavit-in-reply has been filed by any of the parties.

5. During the course of the arguments, learned counsel for the petitioner has restricted herself only on one ground and argued that on the date of passing detention order, the petitioner was in judicial custody, and this aspect ought to have been considered by the detaining authority while passing the detention order. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

6. It appears that on the date of passing the

detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

7. For reasons stated hereinabove, this petition is allowed and the detention order dated 25-10-2001 passed by the respondent no. 1 the Commissioner of Police, Ahmedabad City, Ahmedabad, is hereby quashed and set aside. The petitioner - detenu Anil Amritlal Joshi, is ordered to be released forthwith, if he is not required in any other case. Rule is made absolute, with no order as to costs. D.S. is permitted.

(R.P. Dholakia, J.)

JVSatwara