IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9081 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 concerned   : NO
   Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

 VITHALBHAI MOHANLAL PARMAR
Versus
 COMMISSIONER OF POLICE

 Appearance:
 1. Special Civil Application No. 9081 of 2002
     MS BANNA S DUTTA for Petitioner No. 1
     MR IM PANDYA AGP for Respondent No. 1-3

        CORAM : MR.JUSTICE R.P.DHOLAKIA

 Date of decision: 30/10/2002

ORAL JUDGEMENT
    The present petition has been filed by the the
    petitioner - detenu who 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 19/2/2002 passed by the Commissioner of Police, Surat City and he has been declared as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and learned AGP and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon six offences registered against the detenu under Indian Penal Code. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the detenu was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, she 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)"

4. 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.

5. The petition is allowed. The impugned order of detention dated 19/2/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Vithalbhai Mohanlal Parmar 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. D.S. Permitted.

    (R.P.DHOLAKIA,J.)
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