

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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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?

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KISHOREKUMAR RAMANBHAI PATEL

Versus

COMMISSIONER OF POLICE  
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Appearance:

1. Special Civil Application No. 5 of 2003  
MR ANIL S DAVE for Petitioner No. 1  
MR KAMEN N SHUKLA for Petitioner No. 1  
MR SUDHENSU PATEL, AGP, for Respondents
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CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 29/05/2003

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, challenge is against the detention order passed by

the respondent No.1, Commissioner of Police, Surat City, dated 7.12.2002, invoking the powers under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA Act"), with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order in the area of Kapodra Police Station of Surat City.

It is alleged by the detaining authority that the detenu is a "bootlegger" within the meaning of section 2(b) of the PASA Act and he is carrying on anti-social activities of selling illicit liquor within the jurisdiction of Kapodra Station, Surat City and, also, relied upon a sole case registered against the detenu.

In course of hearing, a specific contention is raised regarding violation of the constitutional safeguards enshrined in Article 22(5) of the Constitution of India. In that, it has been submitted that representation made to the Minister of State for Home, dated 24.12.22002 has not been considered. Affidavit in reply is not filed on behalf of respondent No.2, State of Gujarat. When specific plea or ground is advanced as to the non-consideration of representation and resultant violation of Article 22(5) of the Constitution of India, and not traversed or controverted by filing affidavit in reply, the contention has to be upheld. Undoubtedly, this will affect the right of the detenu in making effective representation against the order of detention. When such a right is infringed, the detention order must be quashed and set aside.

Consequently, the petition is allowed. The order of detention dated 7.12.2002 passed against the detenu is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(J.N.Bhatt, Acting CJ)

(vjn)