

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 242 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 to see the judgements? : NO
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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MEMON BASIR SATARBHAI DHARAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 242 of 2003
M/S THAKKAR ASSOC. for Petitioner
Ms. MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 29/05/2003

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner-detenu has assailed the detention order dated 13.12.2002 passed by the District Magistrate, Bhavnagar, under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'PASA Act'), with a view to preventing him from acting in any

manner prejudicial to the maintenance of public order.

The challenge against the order of detention is on diverse grounds. One ground is non-supply of copies of vital and important documents, depriving the petitioner of his right to make effective representation as provided in Article 22(5) of the Constitution of India. Demand of documents came to be specifically made in the representation made to the detaining authority dated 26.12.2002, wherein, copies of statements of witnesses as well as copies of panchnamas with regard to offences registered with Bhavnagar City 'C' Division Police Station, came to be made. The detaining authority, despite specific demand for supply of vital and important documents, has not supplied the same. The detaining authority has also not filed affidavit in reply. Obviously, therefore, the constitutional safeguards under Article 22(5) of the Constitution is not observed and his right to make effective representation against the order of detention is infringed. Therefore, the continued detention of the petitioner-detenu is unjust, unreasonable and illegal.

Consequently, the petition is allowed. The order of detention dated 13.12.2002 passed against the petitioner-detenu is quashed and set aside. The petitioner-detenu is ordered to 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)