

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 638 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

- =====
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?

HITESHBHAI HARIBHAI TANDEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 638 of 2003
MR MAHBOOB M. SHAIKH for Petitioner
MS HARSHA DEVANI, 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.2, District Magistrate, Navsari, dated

5.12.2002, 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 petitioner-detenu from acting in any manner prejudicial to the maintenance of public order on various grounds. Both the respondents have filed affidavit in reply.

One of the grounds raised in course of submissions pertains to delay in passing the impugned order of detention. The detaining authority has mainly placed reliance upon four criminal cases registered against the petitioner for the offence punishable under the provisions Bombay Prohibition Act. The last offence registered against the petitioner is dated 26th July 2002. The order of detention came to be recorded on 5.12.2002. Thus, it is evident that there is delay of more than four months. The affidavit in reply filed by the Detaining Authority, respondent No.2, does not properly account for and explain the delay.

Thus, the Detaining Authority has not been able to satisfy from the affidavit in reply that cutting short the liberty of the petitioner-detenu by resorting to detention law was so imminent. It is incumbent upon the Authority to establish the nexus between the alleged commission or omission with the detention order. Once the link is not established or the nexus is snapped, passing the detention order could not be said to be legal and valid. In the facts of the case, the delay of four months in passing the order of detention from the registration of last case is inordinate which radiates an imprint of non-application of mind. In the circumstances, taking into consideration the unexplained and unreasonable delay, the questioned detention order is required to be quashed and set aside only on this ground.

Consequently, the petition is allowed. The order of detention dated 5.12.2002 passed against the petitioner-detenu is quashed and set aside. The petitioner-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)