

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7417 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
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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BACHUBHAI KABHAIBHAI VAGHELA

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 7417 of 2002  
MR HR PRAJAPATI for Petitioner No. 1  
MR MR PRAJAPATI for Petitioner No. 1  
MR VM PANCHOLI, AGP for Respondent No. 1-3  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGMENT

By filing this petition, the petitioner detenu has challenged his detention order dated 11.7.2002, by which he is detained under preventive detention as a "bootlegger", under the Prevention of Anti Social Activities Act. Along with the detention order, the petitioner is also served with the grounds of detention

of the same date.

2. In the grounds of detention, it is mentioned that the petitioner is doing illegal activities of transporting liquor. There is a reference to six cases which are pending against the petitioner under the Bombay Prohibition Act. The detaining authority, after considering the material on record, has passed the said detention order which is challenged by the petitioner on various grounds.

3. It is submitted by the learned Advocate for the petitioner that the detaining authority has mentioned at page 23 of the compilation that the petitioner is in judicial custody and is in the District Jail, at Nadiad. However, the detaining authority has stated further that even though the petitioner is in judicial custody, it was necessary to detain him by way of preventive detention. The District Magistrate, i.e. detaining authority, has stated in the grounds of detention that the petitioner was arrested by the police on 10th June 2002 and thereafter he was produced before the Court and he was subsequently admitted in the Government Hospital as he was sick and thereafter, after having been discharged from the Hospital, now he is in the District Jail, at Nadiad. It is also stated that since the petitioner is in Jail, the remand application of the Police authority is adjourned and that the petitioner is not released on bail and the police inquiry is going on. After observing the same, the detaining authority has further stated at page 26 that in spite of the fact that various cases have been filed against the petitioner under the Bombay Prohibition Act and even the petitioner is released on bail, yet he is continuing his illegal activity. However, it is required to be noted that this part of the observation is contrary to the earlier part as referred to above at least in connection with one case when the petitioner was in judicial custody at the relevant time. The authority has not considered this aspect. Learned Advocate for the petitioner has made reference to the decision of the Apex Court in the case of *Amritlal & ors. v. Union Government and ors.*, reported in AIR 2000 SC 3675, wherein in paragraphs 4, 6 and 7, the Apex Court, has observed as under:

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but off-cited decision of this Court in *Binod Singh v. District Magistrate, Dhanbad*, (1986) 4 SCC 416: (AIR 1986 SC 2090): 1986 Cri LJ 1959) wherein it was held

that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxx xxx xxx xxx

- "6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090: 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.
7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved

in the matter but not obtaining a bail order.

... .."

4. Considering the aforesaid aspect of the matter, especially, when the detaining authority has not addressed itself as to why the petitioner should be detained under preventive detention even though he was in judicial custody at the relevant time, it cannot be said that the order of detention was properly passed. Under the circumstances, the impugned order of detention is required to be quashed and set aside.

5. In the result, this petition is allowed. The order of detention dated 11.7.2002 passed against the detenu is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

Sreeram.