

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7505 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?

HARUN HABIBHAI GANCHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7505 of 2002
MS SUBHADRA G PATEL for Petitioner No. 1
MR MK PATEL, AGP for Respondent No. 1-3
-

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner 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, he is also served with the grounds of detention.

2. In the grounds of detention, there is a mention of two criminal cases which are filed against the petitioner under the Bombay Prohibition Act. The said detention order is challenged by the petitioner on various grounds.

3. It is contended by the petitioner that at the time when the detention order was passed, the petitioner was in judicial custody. There is a reference with regard to the same in para 7 of the grounds of detention. The detaining authority has stated that in connection with the case at Sr.No.2, the petitioner is in judicial custody, however, he can be released on bail at any time after moving the bail application before the Court. Under the circumstances, it is found that even though the petitioner is in judicial custody, he has been detained under the preventive detention. Learned Advocate for the petitioner submitted that the authority has not properly considered as to why it is necessary to detain the petitioner under PASA Act even though he is already in judicial custody. Learned Advocate submitted that even there is nothing on record to show that the petitioner had applied for bail at the relevant time. In this connection, she 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 above, in my view, the authority has not properly considered the aspect of the matter and has merely made a cursory observation for passing the order that the petitioner is likely to be released on bail. At least, the authority ought to have disclosed as to on what basis the authority has reached that satisfaction. Therefore, the impugned order of detention

is required to be quashed and set aside.

5. In the result, the 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.