

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10642 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
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?

FIROZABENU BADRUDDIN SAIYED

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10642 of 2003
MS DR KACHHAVAHA for Petitioner No. 1
MR KAMLESH KACHHAVAHA for Petitioner No. 1
MS MITA PANCHAL Ld. AGP for Respondent No. 1-3
-

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/10/2003

ORAL JUDGEMENT

By way of this special civil application, the
petitioner has challenged the order of detention passed

against him by the Police Commissioner, Vadodara city on 18.6.2003 under the exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration three offences registered against the petitioner on 19.1.2003, 23.3.2003 and 4.6.2003 under sec. 66(1)(B), 65(E) and 81 of the Bombay Prohibition Act, whereby it is alleged that the petitioner was found in possession of some quantity of foreign liquor. In addition to this, the detaining authority also relied upon the statements recorded by the sponsoring authority on 11.6.2003 as verified by the detaining authority on 16.6.2003 revealing the incidents of 27.5.2003 and 19.6.2003. From the above material, the order impugned came to be passed by the detaining authority.

Ld. advocate Ms. Kachhava for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. The affidavit filed on behalf of the respondents as placed on record is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, this matter can be disposed of on the ground whether the alleged activities of the detenu could be said to be prejudicial to the maintenance of public order. In this respect the detaining authority relied upon three cases registered against the petitioner under the Bombay Prohibition Act, whereby as per the allegation some foreign liquor was seized from her. Now these facts ipso facto would not lead to the subjective satisfaction that registration of offences against the petitioner under the Bombay Prohibition Act would amount to the activities prejudicial to the maintenance of public order. The detaining authority, thereafter, relied upon the two in-camera statements as recorded by the sponsoring authority and on perusing those statements, it clearly appears that the fact revealed by those statements are more individual disputes than activities prejudicial to the maintenance of public order. The incidents which occurred on 27.5.2003 as narrated by the witness revealed that while the witness was passing through Santoshnagar, he found petitioner and her associates standing near one rickshaw and were unloading the rickshaw which was loaded by boxes of foreign liquor. On noticing the witness by the petitioner and her

associates, called the witness and on suspicion the witness was watching the activities of the petitioner, the witness was beaten. While in the other incident occurred on 19.5.2003, the witness was standing near Juna Padra Road, where the petitioner approached to him by rickshaw and directed him to board the rickshaw with a view to recover bulk of foreign liquor from Atladra village. The witness was also informed by the petitioner that she knows him and, therefore, the witness would have to assist the petitioner. ON refusal, the witness was beaten by the associates of the petitioner. There some general allegations about the criminal tendency and propensity of the petitioner is alleged in both the statements but taking into consideration the totality of the circumstances, it is clear that the activity alleged could hardly be said to be prejudicial to the maintenance of public order. In each case, the length, magnitude and intensity of the questionable activities of a person will have to be judged by the court from the facts of each case. Scrutinising the fact of this case as above, it merely reveal the individual disputes picked up by the petitioner with the witnesses and not the activity by which the public at large was affected. Therefore, the subjective satisfaction of the detaining authority that due to the activities of the petitioner, the public order was disturbed vitiates because there was no such material before the detaining authority. The order in question is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 18.6.2003 by the Police Commissioner, Vadodara city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if she is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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