

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10653 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?

BHARAT @ BHODO @ BHAGO KESHAVBHAI LODHARI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA DUTTA for MR RAJESH K SHAH for Petitioner No. 1
MS MITA PANCHAL AGP for Respondent No. 1-3

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

Date of decision: 17/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the
petitioner has challenged the order dated 17.10.2003
passed by the District Magistrate, Porbandar, against

him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 17.10.2003.

2. The grounds served upon the petitioner and as placed on record reveal that the detaining authority took into consideration the fact that in all four crimes came to be registered against the petitioner, on 03.3.2002, on 17.3.2003, on 15.5.2003 and on 16.5.2003 under Sections 66(b), 116(b) and 81 of the Bombay Prohibition Act, whereby it is alleged that the petitioner was found in the possession of foreign liquor. In addition to this, on the grounds placed on record, it is revealed that the detaining authority relied upon three in-camera statements as recorded by the sponsoring authority and verified by the Divisional Police Officer on 22.5.2003 and from the above material, the order impugned came to be passed.

3. Learned Advocate Ms.Banna Dutta for learned Advocate Mr.Rajesh K.Patel for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, it appears that the matter can be considered and be decided on the sole ground whether the right of the petitioner is breached for making effective representation as guaranteed under Article 22(5) of the Constitution of India. On perusing the grounds, it is clear that in the statements of witnesses relied upon by the detaining authority, the fact about when the incident occurred is kept blank and it is not known that the witnesses referred to the incident as and when the same were occurred. Secondly, going through the copy of the statements, as given to the petitioner, it is found that, those statements contain blank as to the period of occurrence of the incident referred in the statements, and it is also noticed that though the statements are verified by the Divisional Police Officer, but the verification of the same by the detaining authority is nowhere recorded. It is only in the grounds it is mentioned that the statements were verified by the detaining authority, but the corresponding actual verification is not found on the copy of the statements of such witnesses served upon the petitioner. Therefore,

right of the petitioner to make effective representation is breached on account of confusing situation, as aforesaid, and particularly from the grounds served upon the petitioner, it is not known to the petitioner whether actually the statements of the witnesses were verified by the detaining authority, while in the grounds, the detaining authority observed that the statements were verified by him, though the copy of the statements of such witnesses, served upon the petitioner, did not contain the said verification of the detaining authority. Therefore, the order impugned in this Special Civil Application is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Probandar, on 20.6.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair