

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11607 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 to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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RAJESHBHAI ALIAS TAMBU KALKAPRASAD KAHAR

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR SATISH R PATEL for Petitioner No. 1  
MR RM CHAUHAN, AGP for Respondent No. 1-3  
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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 18.06.2003 passed by the Police Commissioner, City of Vadodara,

against him, in exercise of powers under Section 3(1) 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 18.6.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration three offences came to be registered against the petitioner, on 04.9.2002, 16.9.2002 and on 09.6.2003 under Sections 66(b), 65(e) and 81 of the Bombay Prohibition Act, whereby it is alleged that the petitioner was found in the possession of country liquor. In one case 25 liters and in other two cases 24 liters and 80 liters of country liquor was seized from the possession of the petitioner. The detaining authority also took into consideration two in-camera statements as recorded by sponsoring authority on 13.6.2003 and on 14.6.2003 and verified by the detaining authority on 16.6.2003, revealing the incidents of 08.6.2003 and 12.6.2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Satish R.Patel for the petitioner and learned AGP Mr.RM Chauhan for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

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 there was sufficient material before the detaining authority to come to the conclusion that by the alleged activities, the public order was disturbed. In this respect, the detaining authority placed reliance on the fact of registration of crimes registered against the petitioner under the Bombay Prohibition Act. As aforesaid, the allegation is only the registration of crimes on account of the petitioner found in possession of some liters of country liquor. These cases are pending before the competent court. From this fact, it could be hardly said that the activities of the petitioner was prejudicial to the maintenance of the public order. The detaining authority further relied upon two in-camera statements as aforesaid. Having gone through those statements, it appears that on 8.6.2003 at about 8.00 p.m. when witness

was going near Kharivav road, he noticed that the petitioner and his associates were unloading liquors from rickshaw. The petitioner found that the witness was watching the activities and, therefore the witness was called near the petitioner and was beaten on suspicion that the witness was keeping watch on the activities of the petitioner and was informing the police. In the other incident, which occurred on 12.6.2003, the witness was going towards market from Jambubet Dandiya Bazar, at about 7.00 p.m. he found the petitioner and his accomplices going in rickshaw. On noticing the witness, the petitioner get down from the rickshaw, asked the witness that there was country liquor in the rickshaw and the witness was forced to keep the country liquor at the house of the witness. When the witness refused to act accordingly, he was beaten by the petitioner and his associates. Thus, these two incidents if considered in totality of the circumstances, clearly indicates that by these two incidents, it can never be said that these activities of the petitioner was prejudicial to the maintenance of the public order. It is the degree and extent of the reach of the objectionable activity upon the society, which is vital for considering the question whether the man has committed only a breach of law and order or has acted in a manner likely to cause disturbance the public order even the potentiality of the Act to disturb the public tempo of life of the community makes it prejudicial to the maintenance of public order. When we scrutinize the statements of the witnesses, and if we take those contents on their face value, then also, it cannot be said that by those two incidents the society at large was affected, which can be labelled at the most the disturbance of law and order but not the activity prejudicial to the maintenance of public order. Therefore, there was no material before the detaining authority to reach to the subjective satisfaction that by the activities of the petitioner, the maintenance of public order was disturbed. Consequently, 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 Police Commissioner, Vadodara City, on 18.06.2003 under Section 3(1) 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