

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 449 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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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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SAPNABEN W/O RAJKUMAR MOTILAL DAGHA

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 449 of 2004  
Mr Amrish Pandya for MS KRISHNA U MISHRA for Petitioner No. 1  
Ms Mita Panchal, AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 7.12.03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social

Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that five prohibition offences were registered against him before Southern Division Police Station at C.R.No.542, 545, 597, 647 and 1795 of 2003 against the petitioner on 7.3.2003, 9.3.2003, 21.3.2003, 5.4.2003 and 20.10.2003 involving offence punishable u/s.66, 65, 81 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements relating to an incident of 15.9.2003 wherein it was stated that 21.9.2003 against the petitioner saying that the petitioner started quarrelling with these persons and many persons had gathered together. The petitioner showed weapons and, therefore, those persons had to run away from the spot. On the strength of the aforesaid three registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that simply because few offences were registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, learned Advocate for the petitioner has argued that the petitioner has been detained on the ground of registration of few prohibition offences against him. He has contended that simply because the aforesaid offences were registered against the petitioner, it cannot be said that the said activities of the petitioner would likely to disturb public order and, therefore, the petitioner could not

have been detained on this ground.

7. In support of the arguments, learned Advocate for the petitioner has relied upon a decision of the Apex Court in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City & Anr. reported in AIR 1989 SC 491. It would be worthwhile to refer to the observations made in paras 17 and 18 of the said decision as follows:

Para 17 : "Does the expression 'public order' take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the

offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

8. In view of the aforesaid pronouncement of the Hon'ble Supreme Court, it would be difficult to accept that simply because five prohibition offences have been registered, it cannot be said that his activities would lead to a threat to public order.

9. In the present case also the detention order has been passed on registration of five prohibition offences and, therefore, applying to the above principles on the facts of the case on hand, it is clear that the order of detention cannot be sustained in the eye of law on mere registration of few prohibition offences. Therefore, the order of detention is required to be held to be illegal and it is required to be quashed and set aside.

10. So far as the statements of the witnesses are concerned, names have not been disclosed to the petitioner. It has also been contended that when the names of the witnesses were not disclosed, the petitioner could not submit effective representation against the detention and, therefore, his valuable right to make effective representation has been denied. On the other hand, it has been contended by the learned AGP that privilege under section 9(2) has been exercised by the detaining authority. It is true that under section 9(2), the detaining authority has privilege to withhold names of the witnesses from the notice and knowledge of the detenu. In this connection learned Advocate for the petitioner has relied upon a decision of this Court in Special C.A. No.14792/2003 dated 23.3.2004 wherein in para 13, this Court has observed as under:

"13. In the present case, the names of the witnesses have not been supplied and on the other hand, it is found that the detaining authority had adequate materials with it for exercising powers of privilege under section 9(2) of the said At. In the premises, the order of detention cannot be sustained in the eyes of law. So, on the one hand, the alleged bootlegging activities of the petitioner are not found to be a threat to public order or public health and on the other hand, the power of privilege under section 9(2) of the said act, cannot be said to have been claimed by proper exercise of power thereunder. In absence of the above position, the order of detention cannot be sustained in the eye of law."

11. This shows that the impugned order cannot be sustained on the strength of the prohibition offences registered against the petitioner. With respect to the statements of the witnesses who had rendered statements against the petitioner, the power of privilege under section 9(2) has not been properly exercised. Therefore, when the names of the witnesses were not disclosed, the petitioner could not submit effective representation and, therefore, it can be said that there is implied denial to the right of the petitioner to submit effective representation under Article 22 (5) of the Constitution of India. Therefore, further continuance of the detention of the petitioner cannot be justified. The petitioner is, therefore, required to be released from detention. This can be done by allowing the petition and by quashing the detention order.

12. For the foregoing reasons, this petition is allowed. The impugned order dated 7.12.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

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