

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11472 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

- =====
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?

DEVANGBHAI HASTINKUMAR DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11472 of 2004
MR RJ GOSWAMY FOR MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
MR HM PRACHCHHAK AGP for Respondent No. 1-3
-

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

Date of decision: 31/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226
of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 03rd of August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 03rd of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two crimes registered against the petitioner, both at Naranpura Police Station, on 01st of August, 2004, under the Bombay Prohibition Act. In the first case, the petitioner was found in possession of 44 bottles and in the second case 143 bottles of foreign liquor. The detaining authority after going through exhaustively the investigation papers in both the above said cases, came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited foreign liquor and therefore the petitioner was bootlegger within the meaning of the PASA Act. The detaining authority reached to the subjective satisfaction that these activities of the petitioner were required to be prevented forthwith and, therefore, the detaining authority after considering other measures which may be taken against the petitioner under the general law, as a last resort, came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention against the petitioner which is under challenge in this petition.

3. Learned Advocate Mr. R.J.Goswami for learned Advocate Mr. H.R.Prajapati for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind to the relevant material properly.

5. In the grounds of detention, the detaining authority stated that in the first crime registered against the petitioner, he was in judicial custody and in the second crime he was in police custody on remand, when order came to be passed against the petitioner. In this

respect, the detaining authority reached to the subjective satisfaction that in both the cases and in second case on completion of police remand period, the petitioner was likely to move application for bail and was likely to be released on bail by the competent authority. The detaining authority reached to the subjective satisfaction that on so releasing the petitioner on bail, the petitioner was likely to continue his illegal activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3767. The Apex Court observed 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. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed.

7. In the present case, while except the papers of investigation in two crimes registered against the petitioner, there was no material on record to draw the inference that firstly the detenu was likely to move application for bail on remand period being over and secondly the detenu was likely to be released on bail on so moving the bail application by him. Therefore, the subjective satisfaction reached in this respect by the detaining authority is not supported by any cogent material, resulting in vitiating the order of detention on the ground of non-application of mind. The order under challenge therefore is required to be quashed on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 3rd of August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Devangbhai Hastinkumar Desai is hereby ordered 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.)