

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11867 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?

AMRISHBHAI ARVINDBHAI PATEL -THRO-HIS MOTHER KOKILABEN

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11867 of 2004
MS BANNA DUTTA FOR MR HR PRAJAPATI for Petitioner
MR MR PRAJAPATI for Petitioner No. 1
MR HM PRACHCHHAK, AGP for Respondent No.3
RULE SERVED for Respondent No.1-2

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-detenu through his mother Kokilaben Arvindbhai Patel challenging his detention in pursuance of the order passed against him by the Police Commissioner, Ahmedabad City on 3rd 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 detenu is under detention as bootlegger from 3rd August, 2004 in pursuance of the above said order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two criminal offences registered against the petitioner, both before the Naranpura Police Station on 1st August, 2004 under the Bombay Prohibition Act. It was alleged that in first case, the petitioner-detenu was found in possession of 44 bottles of foreign liquor, while in second case, he was found in possession of 143 bottles of foreign liquor. The detaining authority examined thoroughly investigating papers placed before him as material in above two crimes registered against the petitioner. After going through the material placed before him, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting illegal foreign liquor. The detaining authority came to the conclusion that the bootlegging activities of the petitioner-detenu were adversely affecting the public health and were prejudicial to the maintenance of the public order. The detaining authority came to the conclusion that the activities of the petitioner-detenu were required to be prevented forthwith and, therefore, after considering the other measures, which may be taken against the petitioner-detenu, the detaining authority as a last resort passed the order of detention of the petitioner as bootlegger in PASA Act, which is under challenge in this petition.

3. Learned advocate Ms.Banna Dutta for learned advocate Mr.H.R.Prajapati for the petitioner and learned AGP Mr.H.M.Prachchhak, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of, on the sole issue that whether there was proper application of mind by the detaining authority in passing the order of detention in respect of relevant material placed before him.

5. In the grounds of detention, it has been concluded by the detaining authority that in the crimes registered at Sr.No.2, the petitioner while passing and serving of detention order was in police custody on remand. In this respect, the detaining authority reached to the subjective satisfaction that after the remand period was over and on production of the petitioner-detenu before the competent court, the petitioner-detenu was likely to file an application for bail and was likely to be released on bail by the competent court. The detaining authority also reached to the subjective satisfaction that on so releasing the detenu on bail, he would 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 and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent material before the officer passing the detention order that the detenu was 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 was not a cogent material and the detention order based on such material was held liable to be quashed.

7. In the present case also, the detaining authority though relied upon the papers of investigation in two crimes registered against the detenu, but there was no material at all placed before the detaining authority to draw the inference that the detenu was likely to file an application for bail, after remand period was over and the detenu was produced before the court competent. There was also absence of any material before the detaining authority to draw the inference that on filing of such application for bail, the detenu was likely to be released on bail. Undoubtedly, the detaining authority on proper material may draw inference that the detenu was likely, either to move an application for bail or was likely to be released on bail, but in absence of relevant material such inference would amount to non-application of mind vitiating the order. In the present case there was total absence of material from which it could be inferred, firstly that the petitioner-detenu was likely to move an application for bail and secondly, that on moving of such bail application, the petitioner-detenu was likely to be released on bail. Such non-application of mind about the materials placed before the detaining

authority vitiates the order of detention passed against the petitioner-detenu which is under challenge. The order of detention is required to be quashed on this ground alone.

8. In the result, in view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 3rd August, 2004 against the petitioner - detenu in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Amrishbhai Arvindbhai Patel is hereby ordered to be set at liberty forthwith, if he is not required to be detained in Jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)