

SPECIAL CIVIL APPLICATION No 12344 of 2004

HON'BLE MR.JUSTICE J.R.VORA

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of anJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

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 wife of the detenu, challenging detention of the detenu Dajibhai Chhaganbhai Koli Patel, in pursuance of the order passed against him by District Magistrate, Navsari, on 28th of July, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The detenu is under detention as bootlegger from 28th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority has taken into consideration the fact of registration of solitary crime registered against the detenu before Ganadevi Police Station on 8th of June, 2004, under the Bombay Prohibition Act, whereby the detenu was found in possession of quantity of foreign liquor worth Rs. 68,520/-. After going through the investigation papers in the said crime registered against the detenu, the detaining authority came to the conclusion that the detenu was dealing in storing, selling and transporting prohibited foreign liquor. The detaining authority came to the conclusion that the detenu was bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that due to antisocial activities of the detenu, public health is adversely affected and public order is disturbed. The detaining authority came to the conclusion that this illegal activities of the detenu were required to be prevented forthwith and, therefore, after considering other remedies which might be taken against the detenu under the general law, as a last resort, the detaining authority passed the the detention order of the detenu which is under challenged in this petition.

3. Learned Advocate Ms.Hema Rana 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 detenu and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the detenu, the public order was disturbed and public health was

adversely affected.

5. To reach to the subjective satisfaction that bootlegging activities of the detenu were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In undertaking this exercise, the detaining authority must draw a clear line between the cases falling within breach of law and order and breach of public order.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of *DARPAN KUMAR SHARMA vs. STATE OF T.N.*, as reported in (2003) 2 SCC 313 while dealing with solitary instance of robbery as ground for preventive detention, the Apex Court observed that nothing on record to show that the reach and potentiality of the incident was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Solitary instance of robbery held was not relevant for sustaining the order of detention and such incident hardly be said to disturb public peace or public order in jeopardy so as to bring the case within the purview of preventive detention.

7. In the present case, the detaining authority has taken into consideration the investigation papers in solitary case registered against the detenu under the Bombay Prohibition Act. This case is registered against the detenu because as per allegation he was found in possession of prohibited foreign liquor in breach of law. The detenu may be tried and may be punished, if found guilty for such breach of law, but the filing of such case itself has no bearing on the question of maintenance of public order or public health. Surely, the act constituting the offence cannot be said to have affected the even tempo of the life of the community. The subjective satisfaction arrived at by the detaining authority therefore is not valid, legal and according to law. The order under challenge is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the District Magistrate, Navsari, on 28th of July 2004, against the detenu in exercise of powers

under Section 3(2) of the PASA Act, 1980, is hereby quashed and set aside. The detenu - Dajibhai Chhaganbhai Koli Patel 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.)

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