

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17087 of 2004

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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VIJAY CHMANJI THAKOR

Versus

COMMISSIONER OF POLICE  
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Appearance:

1. Special Civil Application No. 17087 of 2004  
MS DR KACHHAVAHA for Petitioner No. 1  
MR KAMLESH KACHHAVAHA for Petitioner No. 1  
MRS HB PUNANI, AGP for Respondents  
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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/02/2005

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 19th September, 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 19th September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration three criminal cases registered against the petitioner all before Prohibition Police Station, Western Zone, Ahmedabad under the Bombay Prohibition Act on 3rd November, 2003, 20th January, 2004 and 22nd February, 2004. In first case, it was alleged that the petitioner was found in possession of prohibited country liquor to the extent of 7 liters, in second case, the petitioner was found in possession of prohibited country liquor to the extent of 10 liters and in third case, the petitioner was found in possession of prohibited country liquor to the extent of 48 liters. The detaining authority thoroughly examined the investigation papers in all the above crimes registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor. In view of the detaining authority, the liquor is injurious to the public health and dangerous to human life. In view of the detaining authority, if the petitioner was kept free the petitioner was likely to continue his illegal activities in dealing with country liquor. The detaining authority came to the conclusion that the activities of the petitioner being bootlegging activities were prejudicial to the maintenance of the public order and adversely affecting the public health. The detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act to prevent his illegal activities forthwith. After considering other remedial measures available against the petitioner under the general law, the detaining authority passed an order of detention of the petitioner under the PASA Act, which is under challenge in this petition.

3. Learned advocate Mr.Kamlesh Kachhava for the petitioner and learned AGP Mrs.H.B.Punani for the respondents were heard at length.

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 the detaining

authority applied mind properly to the material placed before him.

5. The petitioner was in judicial custody, when the above said order was executed upon him. This fact is narrated in the grounds of detention by the detaining authority. However, in this respect, the detaining authority came to the conclusion that though the petitioner was in judicial custody but at any time, he was likely to prefer the applications for bail in the said cases and was likely to be released on bail. The detaining authority also reached to the subjective satisfaction that on so releasing the petitioner on bail, he was likely to continue his illegal bootlegging activities.

6. The facts of the present case are squarely covered by the 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 materials 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 held a cogent material and the detention order based on such material was held liable to be quashed.

7. In the present case also, it becomes clear that there was no material at all placed before the detaining authority to arrive at the subjective satisfaction that the detenu was likely to file applications for bail. There was no material at all placed before the detaining authority to reach to the conclusion that on so moving the bail application, the detenu was likely to be released on bail by the competent Court. Thus, the subjective satisfaction of the detaining authority as to ending of judicial custody of the petitioner is not based on any material. The subjective satisfaction arrived at by the detaining authority in this respect, therefore, is not valid, legal and in accordance with law. The order under challenged 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 Police Commissioner, Ahmedabad City on 19th July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu VIJAY CHAMANJI THAKOR

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.]

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