

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 20310 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
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 - 5 Whether it is to be circulated to the civil judge ?

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KIRTISINH NATWARSINH VAGHELA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR ANIL H SONI for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 30/11/2005

ORAL JUDGMENT

1. Kirtisinh Natwarsinh Vaghela - Petitioner
has filed this habeas corpus petition under Article

226 of the Constitution of India with a prayer that this Court may please to quash and set aside the order of detention dated 29.08.2005 passed by Commissioner of Police, Ahmedabad city respondent No.2 herein under the provisions of under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') which is illegal, null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 01.10.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 10.10.2005 which was made returnable within four weeks and therefore this matter has come up before this Court.

2. Heard, Mr. Anil H. Soni, learned Advocate for the petitioner and Mr. Pujari, learned A.G.P. on behalf of the state.

3. Mr. Soni, learned Advocate for the petitioner has invited my attention to the order of detention dated 29.08.2005 passed by Commissioner of Police, Ahmedabad city by which the petitioner was

detained and sent to District Jail, Porbandar on the same day.

4. He has also invited my attention to the grounds supplied by the detaining authority. As the grounds of detention four criminal cases are shown as registered against the detenu.

5. First offence is registered as being C.R. No.688/04 dated 28.05.2004 at Prohibition Station (East Division)punishable under Section 66B and 65E. In that case the authority confiscated 17 litters of country liquor. Second offence is registered as being C.R. No.1955/04 dated 18.12.2004 at Prohibition Station (East Division)punishable under Section 66B and 65E of the Bombay Prohibition Act. In that case the authority confiscated 42 litters of country liquor. Third offence is registered as being C.R. No.1395/05 dated 22.08.2005 at Prohibition Station (East Division)punishable under Section 66.1B,65E and 81 of the Bombay Prohibition Act. In that case authority confiscated 52 litters of country liquor with Rs.1950/- in cash. Forth offence is

registered as being C.R. No.1399/05 dated 23.08.2005 at Prohibition Station (East Division)punishable under Section 66.1B,65E and 81 of the Bombay Prohibition Act. In that case the authority confiscated 30 litters of country liquor along with one scooter valued at Rs.15,000/-.

6. In the grounds of detention, it was also alleged that the detenu is carrying on anti-social activities and he is a 'Bootlegger' within the meaning of Section 2(b)of the Act. The detenu has also made representation through his Advocate dated 20.09.2005. Learned Advocate for the petitioner further stated that when the last offence was registered petitioner was in judicial custody. Therefore, there is no question of committing any activities disturbing law and order situation.

7. Mr. Soni, learned Advocate for the petitioner has placed reliance on judgment of the Supreme Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another reported in AIR 1989 SC 491 and Division

Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Culla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat.

8. Mr. Pujari, learned A.G.P. has relied on affidavit filed by Mr. K.R. Kaushik, Commissioner of Police, Ahmedabad city in which it has been stated that all the grounds of detention are correct, clear and he has considered relevant material and documents pertaining to all four cases registered against the detenu, and therefore, detenu has been declared as 'Bootlegger' within the meaning of Section 2(b) of the said Act and order of detention has been passed in this behalf.

9. In the facts and circumstances of the case and in view of the judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra) and Division Bench judgment of this Court in the case of Ashok Makwana(Supra), this Court is of the view that mere indulgence in bootlegging activity may not amount to breach of any 'public order', at the most it may

amount to prejudicial to law and order situation.

10. In view of the above, the order of detention dated 29.08.2005 passed by Commissioner of Police, Ahmedabad city is hereby quashed and set aside. Detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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