

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION No. 13844 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.H.WAGHELA**

Sd/-

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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 ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
? 1 to 5 NO

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**SANJAY ABHESING RAJ - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR HARSHAD K PATEL for Petitioner(s) : 1,  
MR PATHIK ACHARYA ASSTT GOVERNMENT PLEADER for Respondent(s) :1-3,

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**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 30/10/2007**

**ORAL JUDGMENT :**

1. By the present petition under Article 226 of the Constitution, petitioner has sought the relief of order dated 18.04.2007 of his detention being set aside. That impugned order dated 18.04.2007 is issued by Police Commissioner,

Vadodara in exercise of his powers conferred under the provisions of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) on the basis that the petitioner was found to be repeatedly indulging in anti-social activity of bootlegging and one offence being III-C.R.No.332 of 2007 under the Prohibition Act was registered on 14.4.2007 against the petitioner in Makarpura Police Station of Vadodara in which 474 small bottles of liquor, each containing 180 ml., is stated to have been seized as muddamal. According to the grounds of detention supplied with the impugned order, even as the aforesaid offence was being investigated, other actions under the Prohibition Act were not possible and alcohol being injurious to health, there was likelihood of danger to public health on account of consumption of illicit liquor in which the petitioner was dealing. It is further stated that possibility of the petitioner continuing in anti-social activities could not be denied and hence it was found to be necessary to detain the petitioner after considering the documents and statements which were relied upon and supplied to the petitioner.

2. Even as the present petition was admitted on 14.06.2007 and an affidavit-in-reply of the detaining authority was ready and executed on 06.08.2007, it was submitted to this court and copy thereof supplied to the petitioner only on 29.10.2007 when the matter was taken up for final hearing. It is stated in that affidavit, *inter alia*, that *prima facie* involvement of the petitioner was established in the offence registered against him. It is further stated: "12.....I say and submit that an offence has been registered against the petitioner under the provisions of Bombay Prohibition Act, wherein the involvement of the petitioner is clearly established from the evidence on record. I say and submit that the order of detention is not passed after considering same facts. I say and submit that the petitioner is doing his bootlegging activities in a sequence. I say and submit that the liquor is injurious to health. I say and submit that by drinking it, it will likely to create health hazard in general public. Thus, the public order has been disturbed. Hence the order of detention passed against the petitioner is legal, just and proper."

3. In the above facts, it was sought to be argued on behalf of the respondents that danger to public health caused by the activity of

bootlegging by the petitioner substantiated the assumption of likelihood of public order being adversely affected and, for that reason, the subjective satisfaction about the necessity of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order and the impugned order directing his detention were legal and justified.

4. As held by this court in ***Amarbhai Kanjibhai Nayak v. Commissioner of Police, Ahmedabad City & Ors. [1993 (3) G.L.R. 2703]*** and in ***Sohanlal Surajaram Visnoi v. State of Gujarat [2004 (2) G.L.R. 1051]***, solitary incident of violation of prohibition law, normally, without anything more, would not be a problem to the maintenance of public order and, for such solitary incident, no person can be detained under the Act. It was also seen from analysis of the provisions of sub-section (4) of section 3 and the Explanation appended thereto that the presumption of likelihood of public order being adversely affected could arise, if danger were caused to life or public health, but such danger has to be grave or widespread for the mandatory presumption of likelihood of public order being adversely affected. In the facts of the present case, nothing from the material on record could substantiate or justify the presumption of grave

or widespread danger to life or public health and hence, the presumption of likelihood of public order being adversely affected could not have been legally availed by the detaining authority for the purpose of arriving at the subjective satisfaction.

5. Therefore, in the facts and circumstances, impugned order dated 18.04.2007 of preventive detention is found and held to be unsustainable in law and set aside with the direction that the petitioner, Sanjay Abhesing Raj, shall be set at liberty forthwith unless required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

Sd/-  
( **D.H.Waghela, J.**)

(KMG Thilake)