

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6328 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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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
?

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**MADHUBEN WD/O GIRISHBHAI PREMABHAI PATEL THRO SON -
Petitioner(s)**

Versus

POLICE COMMISSIONER & 2 - Respondent(s)

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Appearance :

MR NM KAPADIA for Petitioner(s) : 1,

Ms Sandhya Natani, Asstt.GOVERNMENT PLEADER for Respondent(s) :

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/06/2008

ORAL JUDGMENT

1. The petitioner-lady detenu has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the order dated 24.12.2007 passed by

respondent No.1-Police Commissioner, Surat City, whereby, in exercise of power under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, 'PASA Act') the petitioner has been detained as a bootlegger. In pursuance of the said impugned order, the petitioner is detained in jail.

Heard the learned advocate for the petitioner and the learned AGP for the respondents.

No affidavit-in-reply is filed by the learned AGP on behalf of the respondents controverting the averments made in the petition.

2. From the grounds of detention, it appears that two offences being CR.I.No.1170 and 1493 of 2007 under sections 66 (1)b and 65(e) etc. under the Bombay Prohibition Act, were registered with Sachin police station and Sardarnagar police stations, wherein country as well as foreign liquor was found from the possession of the detenu. On the basis of registration of these cases, the detaining authority held that the present detenu was carrying on activities of selling country liquor which is harmful to the health of the public. It is held by the detaining authority that as the detenu is indulged in illegal activities, it is required to restrain her from carrying out further illegal activities i.e. selling of liquor. The detaining authority has placed reliance on the above registered offences and statements of unnamed witnesses. In the opinion of this court, the activities of the detenu can, by no stretch of reasoning, be said to be disturbing the public order. It

is seen from the grounds that a general statement that has been made by the detaining authority that consuming liquor is injurious to health. In fact, a perusal of the order passed by the detaining authority shows that the grounds which are mentioned in the order are in reference to the situation of 'law and order' and not 'public order'. Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind and the impugned order, therefore, deserves to be quashed and set aside.

3. Except two statements of the anonymous witnesses, there is no material on record which shows that the petitioner-detenu is carrying out illegal activities of selling liquor which is harmful to the health of the public. In the case of **Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat** (2001 (1) GLH 393), having considered the decision of the Hon'ble Apex Court in the case of **Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740)**, this court held that the cases wherein the detention order are passed on the basis of the statements of such witnesses fall under the maintenance of "law and order" and not "public order".

4. Applying the ratio of the above decisions, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding that there is threat to the 'public order' and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained

and, therefore, it deserves to be quashed and set aside.

5. In the result, this Special Civil Application is allowed. The impugned order of detention dated 24.12.2007 passed by the Commissioner of Police, Surat is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

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