

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8259 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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BACHUBHAI UKABHAI NAYAK - Petitioner(s)
Versus
COMMISSIONER OF POLICE OF CITY OF AHMEDABAD & 2 -
Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,
 MR AJ DESAI, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/06/2008

ORAL JUDGMENT

Leave to amend the date of detention.

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

2. The petitioner-detenué has preferred this petition under Article 226 of the Constitution of India, for appropriate writ, order or direction for quashing and setting aside the impugned order dated 1.12.2007 passed by the respondent No.1-Commissioner of Police, Ahmedabad City, in exercise of power under sub-section(2) of Section (3) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) whereby the petitioner has been detained as a bootlegger. In pursuance of the said impugned order, the petitioner is detained in Navsari Sub-Jail.

3. From the grounds of detention, it appears that one offence being Prohibition CR No.5164 of 2007 under the provisions of Sections 66B, 65E and 81 under the Bombay Prohibition Act, was registered with Maninagar Police Station, wherein a quantity of total 138 ltrs. of country made liquor were found from the possession of the detenué. On the basis of registration of this case, the detaining authority held that the present detenué was carrying on activities of selling foreign made liquor which is harmful to the health of the public. It is held by the detaining authority that as the detenué is indulged in illegal activities, it is required to restrain him 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 detainee can, by no stretch of imagination, 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 arrived at by the detaining authority is vitiated on account of non-application of mind and the impugned order, therefore, deserves to be quashed and set aside.

4. Except the statements of some anonymous witnesses, there is no material on record which shows that the petitioner-detainee is carrying on activities of selling country made 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 passed on the basis of the statements of the witnesses falls under the maintenance of "law and order" and not "public order".

5. Applying the ratio of the above decisions, it is clear that before passing an order of detention of a

detenue, 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 would not fall within the category of threat to "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.

6. I am fortified by in my view by the decision taken by this Court in the case of **Sandip Omprakash Gupta v. State of Gujarat (2004)(1) GLR 865**) that solitary incident of violation of prohibition law, normally would not be a problem to the maintenance of public order and for such solitary offence, no person can be detained under the Act.

7. In the result, this Special Civil Application is allowed. The impugned order of detention passed by the detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

Sreeram.

(M.D.Shah, J.)