

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8324 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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**MANISHABEN W/O. GAURAVBHAI JERAMBHAI PRAJAPATI -
Petitioner(s)**

Versus

COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MR CHETAN B RAVAL for Petitioner(s) : 1,
MR UMANG OZA, 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 10.12.2007 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 Himmatnagar Sub-Jail, Himmatnagar.

3. From the grounds of detention, it appears that out of the four offences, three Prohibition cases being CR Nos.308 of 2006, 481 of 2006 and 1108 of 2006 have been registered at South Prohibition Station and one case being CR No. 5212 of 2007 has been registered at Vatva Police Station, under the provisions of Sections 66B and 66E under the Bombay Prohibition Act, wherein a quantity of total 67 ltrs. of country made liquor were found from the possession of the detenué. On the basis of registration of these cases, the detaining authority held that the present detenué was carrying on activities of selling country 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 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 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-detinue 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 detainee, 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. 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 detainee 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.)

Sreeram.