

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9117 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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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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**SAVITABEN DASHRATHBHAI MOHAN- BHAI GANIWALA (DEVIPUJAK) -
Petitioner(s)**

Versus

**COMMISSIONER OF POLICE- AHMEDABAD CITY & 2 -
Respondent(s)**

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Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1, MR KAMLESH KACHHAVAH for
Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

MR DR CHAUHAN, AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 28/11/2008

ORAL JUDGMENT

1. By filing present petition, under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order of detention dated 08.5.2008 passed by the respondent No.1 - Commissioner of Police, Ahmedabad,

against the detenu, in exercise of power conferred under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA Act"). The detenu is branded as "bootlegger".

2. Heard the learned Advocate for the petitioner and learned AGP Mr. D.R. Chauhan, for the respondents. No Affidavit in reply is filed by the respondents controverting the averments made by the petitioner.

3. The detenu came to be detained as "bootlegger" on his involvement in the offences being Prohibition CR No. 5027 of 2008, registered with Shahpur Police Station, Ahmedabad.

4. It has been submitted by the learned Counsel for the petitioner that it is settled legal position that on registration of single solitary offence on registration of single solitary offence no order of detention could have been passed as the petitioner – detenu cannot be branded as "bootlegger" on the alleged activity. It has been submitted that the activities of the petitioner cannot be said to be injurious to the public health or public order. It has been further submitted that no cogent material and/or no document is supplied to the detenu in respect of subjective satisfaction.

5. I have gone through the grounds of detention and considered the arguments advanced by the learned Counsel for the petitioner as well as the learned A.G.P.

6. The Court is of the opinion that there is much substance

in the arguments advanced by learned Counsel for the petitioner. It is seen from the grounds that a general statement 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.

7. Except the general statement, there is no material on record which shows that the petitioner – detenue 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/s. POLICE COMMISSIONER, Surat**, reported in **2001 (1) GLH 393**, having considered the decision of the Hon'ble Apex Court in the case of **Ram manohar Lohia v/s. State of Bihar**, reported in **AIR 1966 SC 740**, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law and order" and not "public Order".

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings 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.

9. In the result, this petition is allowed. The impugned order of detention dated 08.5.2008 passed by the respondent No.1 - Police Commissioner, Ahmedabad, 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 permitted.

(Z.K.SAIYED, J.)

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