

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12453 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

=====

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
?

=====

MOHAMMED JAVED JAFAR ALI ANSARI THROUGH BROTHER -
Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

=====

Appearance :

MR MAHESH B BARIYA for Petitioner(s) : 1, MR MM LOKHANDWALA for
Petitioner(s) : 1,
MR DR CHAUHAN, AGP for respondents

=====

CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 28/11/2008

ORAL JUDGMENT

By filing the present petition under Article 226 of the Constitution of India, the brother of detenu has prayed to quash and set aside the order of detention dated 14.5.2008 passed by the respondent No.2-Police Commissioner, Ahmedabad City, 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") branding the detenu as a "Bootlegger". In pursuance to the said order, the detenu has been detained in Rajkot Jail.

2. Heard the learned advocate for the detenu and learned AGP Mr.Chauhan for the respondents. No affidavit in reply is filed by the respondents controverting the averments made on behalf of the detenu.

3. The detenu came to be detained as "Bootlegger" in connection with one offence being Prohibition CR No.5027 of 2008 registered with Shahpur Police Station for the offences punishable under the provisions of the Bombay Prohibition Act.

4. The learned advocate for the detenu has submitted that it is a settled legal position that on registration of single solitary offence, no order of detention could have been passed branding the detenu as a "Bootlegger". He has further submitted that the activities of the detenu cannot be said to be injurious to the "public health" or "public order". Further is submitted by the learned advocate that there is gross delay in passing the order of detention and there is gross delay in executing the order.

5. I have gone through the grounds of detention and considered the arguments advanced by the learned advocate for the detenu as well as the learned AGP.

In the opinion of this Court, there is much substance in the arguments advanced by the learned advocate for the detenu. 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 arrived at by the detaining authority is vitiated on account of non-application of mind and therefore, the impugned order is required to be quashed and set aside.

6. Except general statements of some witnesses, there is no material on record which shows that the detenu is carrying out illegal activities which is harmful to the health of the public. In the case of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. 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 vs. STATE OF BIHAR, reported in AIR 1966 SC 740, this Court has held that the cases wherein the detention orders are passed on the basis of the statements of such witness falls under the maintenance of "law and order" and not 'Public order'.

7. Applying the ration of the above decisions, it is clear that before passing an order of detention, 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 '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, it cannot be sustained and, therefore, it deserves to be quashed and set aside.

8. In the result, this Special Civil Application is allowed. The impugned order of detention dated 14.5.2008 passed by the detaining authority, i.e. respondent No.2-Police Commissioner, Ahmedabad City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if his presence is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(Z.K.Saiyed, J.)

Sreeram.