

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION No. 28919 of 2007**

**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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**HALIMABAHEN W/O HUSENBHAI SAMA - Petitioner(s)**

**Versus**

**THE STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR AR SHAIKH for Petitioner(s) : 1,

Mr Hokam Singh, Asstt.GOVERNMENT PLEADER for Respondent(s) :

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**CORAM : HONOURABLE MR.JUSTICE MD SHAH**

**Date : 30/04/2008**

**ORAL JUDGMENT**

1. The petitioner-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 7.10.2007 passed by

respondent No.2-Commissioner of Police, Rajkot 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.

2. From the grounds of detention, it appears that one offence being CR.I.No. 520 of 2007 under sections 66 (1)b and 65(e) etc. under the Bombay Prohibition Act, was registered with 'B' Division police station, wherein quantity of different brands of foreign liquor was found from the possession of the detenu. On the basis of registration of this case, the detaining authority held that the present detenu was carrying activities of selling 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 offence 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 orders 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. No affidavit-in-reply is filed by the learned AGP on behalf of the respondent-detaining authority controverting the averments made in the petition.

5. I am fortified 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.

6. In the result, this Special Civil Application is allowed. The impugned order of detention dated 7.10.2007 passed by the Commissioner of Police, Rajkot 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.]**

*msp*