

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3246 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S. DAVE

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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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NARSHIBHAI MOHANBHAI BARAIYA - Petitioner(s)

Versus

DISTRICE MAGISTRATE & 2 - Respondent(s)

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Appearance :

MR ATIT D THAKORE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 29/06/2012

ORAL JUDGMENT

1.This petition is directed against the order of
detention dated 17.01.2012 passed by respondent

No.1, in exercise of powers conferred under Section 3(1)/3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short "the Act") by detaining the detinue as a "bootlegger" as defined under Section 2(b) of the Act.

2. Learned Advocate for the detinue submits that registration of FIR/s itself cannot lead to disturbance of even tempo of public life and therefore the public order. He further submits that, except FIR/s registered under the Bombay Prohibition Act, there was no other material before the detaining authority whereby it could be inferred reasonably that the detinue is a 'bootlegger' within the meaning of Section 2(b) of the Act and required to be detained as the detinue's activities are prejudicial to the maintenance of public health and public order. In support of the above submission, learned Counsel for the detinue has placed reliance on judgment of the Apex Court in the case of **Piyush Kantilal Mehta vs. Commissioner of Police, AIR 1989 Supreme Court 491** and the recent judgment dated 28.03.2011 passed by the Division Bench of this Court (Coram : S.K. Mukhopadhaya C.J. and J.B. Pardiwala, J.) in **Letters Patent Appeal No.2732 of 2010 in Special Civil Application No.9492 of 2010 (Aartiben vs. Commissioner of Police)** which would squarely help the detinue.

3. Learned Assistant Government Pleader submitted that registration of FIR/s would go to show that

the detenue had, in fact, indulged into such activities, which can be said to be disturbing the public health and public order and in view of sufficient material before the detaining authority to pass the order of detention, no interference is called for by this Court in exercise of its power under Article 226 of the Constitution of India.

4. Having heard the rival submissions of the parties and perused the record of the case, I am of the view that FIR/s registered under the Bombay Prohibition Act alone cannot be said to be sufficient enough to arrive at subjective satisfaction to the effect that the activities, as alleged, are prejudicial to the public order or lead to disturbance of public order. There has to be nexus and link for such activities with disturbance of the public order. On careful perusal of the material available on record and the ratio laid down by the Apex Court in the case of **Piyush Kantilal Mehta** (supra) and the recent judgment dated 28.03.2011 passed by the Division Bench of this Court (Coram : S.K. Mukhopadhaya C.J. and J.B. Pardiwala, J.) in **Letters Patent Appeal No.2732 of 2010 in Special Civil Application No.9492 of 2010 (Aartiben vs. Commissioner of Police)**, I am of the view that the activities of the detenue cannot be said to be in any manner prejudicial to the public order and therefore, the order of detention passed by the detaining authority cannot be sustained and

is required to be quashed and set aside.

5. In the result, this Special Civil Application is allowed. The impugned order of detention dated 17.01.2012 passed by the respondent No.1 is hereby quashed and set aside. The detinue is ordered to be set at liberty forthwith if not required in any other case.
6. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[ANANT S. DAVE, J.]

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