

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3603 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

=====

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 ?

=====

DAIBEN W/O BIJALBHAI KARNABHAI MER - Petitioner(s)

Versus

DISTRICT MAGISTRATE SHRI & 2 - Respondent(s)

=====

Appearance :

MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 1,
Mr.Maulik Nanavati, AGP for Respondent(s) : 2 - 3.
RULE SERVED BY DS for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 11/05/2012

ORAL JUDGMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the Act of 1985') by the order dated 12.01.2012 passed by the District Magistrate, Bhavnagar, and he has been declared as bootlegger.

Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record.

From the grounds of detention, it appears that two offences being Palitana Town Police Station Prohibition C.R.No.197 of 2011 and 441 of 2011 under the Prohibition Act have been registered against the detenu, wherein it is alleged that a total quantity of 815 bottles 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 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 detenu is indulged in illegal activities, it is required to restrain the detenu from carrying on further illegal activities, i.e. selling 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 imagination, can 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.

Except the statements of some anonymous witnesses, there is no material on record which shows that the detenu 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 fall under the maintenance of "law and order" and not "public order".

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 "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.

The petition is allowed. The impugned order of detention dated 12.01.2012 passed by the District Magistrate, Bhavnagar, passed against the detenu 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)

srilatha