

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13812 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE A.J. DESAI

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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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ASIFKHAN @ CHAMDO YUNUSKHAN PATHAN - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MM TIRMIZI for Petitioner(s) : 1,
MS.AMITA SHAH, AGP for Respondent(s) : 1, 3,
RULE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.J. DESAI

Date : 30/10/2012

ORAL JUDGMENT

[1] This petition is directed against the order
of detention dated 31.08.2012 passed by respondent

No.2, Commissioner of Police, Ahmedabad City in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short" the Act) by detaining the detenu as a "bootlegger" as defined under Section 2(b) of the Act. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to one criminal case pending against the petitioner. The case is registered under the provisions of the Bombay Prohibition Act. It is alleged that the petitioner is dealing in country liquor.

[2] Mr.MM Tirmizi, learned advocate for the detenu submits that registration of FIR itself cannot lead to disturbance of even tempo of public life and therefore the public order. The order of detention is assailed by the detenu on various grounds mentioned in the memo of the petition. However, learned counsel for the detenu submits that, except FIR registered under the Bombay Prohibition Act, there was no other material before the detaining authority whereby it could be inferred reasonably that the detenu is a 'bootlegger' within the meaning of Section 2(b) of the Act and required to be detained as the detenu's activities are prejudicial to the maintenance of public health and public order. In support of the above submission, learned counsel for the detenu 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 28.3.2011 passed by the Division Bench

of this Court [Coram: S.J. Mukhopadhaya C.J. & J.B. Pardiwala, J].] **in Letters Patent Appeal No2732 of 2010 in Special Civil Application No.9492 of 2010 (Aartiben vs. Commissioner of Police)** which would squarely help the detenu.

[3] Ms.Amita Shah, learned Assistant Government Pleader submitted that registration of FIR would go to show that the detenu 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 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 28.3.2011 passed by the Division Bench of this Court [Coram: S.J. Mukhopadhaya C.J. & J.B. Pardiwala, J].] **in Letters Patent Appeal No2732 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 detenu 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 order of detention dated 31.08.2012 passed by respondent No.2 is hereby quashed and set aside. The detenu, is ordered to be set at liberty forthwith if the detenu is not required in connection with any other case. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.J.DESAI, J.)

ASHISH N.