

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 15100 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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VIJAYBHAI NARANBHAI MAKWANA- AHIR....Petitioner(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR PRATIK Y JASANI, ADVOCATE for the Petitioner(s) No. 1

MR DEVANG DAVE AGP for the Respondent(s) No. 1 , 3

RULE SERVED BY DS for the Respondent(s) No. 1 - 2

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CORAM: HONOURABLE MR.JUSTICE A.J.DESAI

Date : 30/11/2012

ORAL JUDGEMENT

1. By filing present petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order of detention dated 18/9/2012 passed against the detenu by the respondent No. 2 – the Commissioner of Police, Rajkot, 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 detenu is branded as “dangerous person”.

2. Heard learned advocate Mr. Pratik Y. Jasani for the petitioner and learned AGP Mr. Devang Dave for the State.

3. The detenu came to be detained as “dangerous person” on his involvement in the offences being (i) CR No. (I) 108 of 2011 and (ii) CR No.I-388 of 2011 and (iii) CR No. II 198 of 2012 registered before Rajkot City Police Station.

4. It has been submitted by the learned Counsel for the petitioner that the allegations made against the detenu are not correct; that the material collected by the detaining authority and looking to the statement recorded by the detaining authority, it cannot be said that the alleged activities of the petitioner would fall within the purview of “dangerous person”

5. I have gone through the grounds of detention and considered the arguments advanced by the learned Counsel for the petitioner as well as the learned A.G.P.

6. The Court is of the opinion that there is much substance

in the arguments advanced by learned Counsel for the petitioner. The detaining authority has placed reliance on the aforesaid registered offences and statements of witnesses. After recording the subjective satisfaction about the detenu being a dangerous person and with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, the impugned order of detention was passed by the detaining Authority.

7. Except the general statement, there is no material on record which shows that the detenu is acting in such a manner which is dangerous to the public order. There are number of decisions of this Court as well as the Hon'ble Apex Court on the point of relying on this point. In view of the ratio laid down by the Hon'ble Supreme Court in the case of (i) **DISTRICT COLLECTOR, ANANTHAPUR v/s. V. LAXMANAN**, reported in **(2005) 3 SCC 663**; (ii) **AMANULLA KHAN KUDEATALLA KHAN PATHAN v/s. STATE OF GUJARAT**, reported in **AIR 1999 SC 2197**; and (iii) **MUSTAKMIYA JABBARMiya SHAIKH v/s. M.M. MEHTA**, reported in **(1995) 3 SCC 237** the Court is of the opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of public order. In the case of **ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI v/s. 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 v/s. State of Bihar**, reported in **AIR 1966 SC 740**, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law

and order” and not “public Order”.

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings 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.

9. The petition is allowed. The impugned order of detention dated 18/9/2012 passed by respondent No.2 is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(A.J.DESAI, J.)

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