

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 13513 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE S.G.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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ASHOKBHAI CHOTTUBHAI PATEL....Petitioner(s)

Versus

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

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Appearance:

MR HARNISH V DARJI, ADVOCATE for the Petitioner(s) No. 1

MS MOXA THAKKAR, 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 S.G.SHAH

Date : 25/10/2013

ORAL JUDGMENT

This petition is directed against the order of detention dated 17.6.2013 passed by respondent No.2, in exercise of powers conferred under section 3[1]/3[2] of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short 'the Act'] by detaining the detenue as a "bootlegger" as defined under section 2[b] of the Act.

2. Learned advocate for the detenue submits registration of solitary FIR 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 detenue is a 'bootlegger' within the meaning of Section 2[b] of the Act and required to be detained as the detenue's activities are prejudicial to the maintenance of public health and public order. In support of the above submission, learned counsel for the detenue has placed reliance on judgment of the Hon'ble Apex Court in the case of **Piyush Kantilal Mehta vs. Commissioner of Police, reported in AIR 1989 S.C. 491, Anil Dey v. State of West Bengal reported in AIR 1974 SC 832, Smt.Angoori Devi v. Union of India reported in AIR 1989 SC 371 and Darpan Kumar Sharma alias**

Dharban Kumar Sharma v. State of Tamil Nadu reported in **AIR 2003 SC 971** and the recent judgment dated 28/3/2011 passed by the Division Bench of this Court [Coram : S.K. Mukhopadhyaya, C.J. & 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 detenue.

3. Learned AGP 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 solitary 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 above cited cases and the recent judgment dated 28.3.2011 passed by the Division Bench of this Court in Letters Patent Appeal No.2732 of 2010, 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. It is made clear that quashing and setting aside of such detention order shall not be considered and created as innocence of the petitioner in all other acts.

5. In the result, the petition is allowed. The order of detention dated 17.6.2013 passed by respondent No.2 is quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute accordingly. **Direct Service** is permitted.

(S.G.SHAH, J.)

VATSAL