IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6461 of 2014

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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RAMESHBHAI VARDHAJI MARWADI....Petitioner(s)

Versus

DISTRICT MAGISTRATE & 2....Respondent(s)

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Appearance:

MR CHETAN B RAVAL, ADVOCATE for the Petitioner(s) No. 1

MS AMITA SHAH, AGP for the Respondent(s) No. 1 - 3

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CORAM: **HONOURABLE MR.JUSTICE S.G.SHAH**

Date : 31/07/2014

CAV JUDGMENT

1. This petition is directed against the order of detention dated 03/03/2014 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 [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 three FIRs themselves cannot lead to disturbance of even tempo of public life and, therefore, the public order. He further submits that, except FIRs 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 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 FIRs 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 three 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. 2732/2010, 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.

5. The petitioner has argues on merits of FIRs, referring certain judgments. However, discussion of such facts, prima facie at this stage, is not warranted since it may otherwise prejudice to the trial.

6. However, since all such orders are quashed on technical ground, the same shall not come in the way of the Detaining Authority to pass an appropriate order in future.

7. It is generally seen that though some of the accused are repeatedly detained on different occasions for different offences, only because of nondisclosure of proper information and in all such detention orders, such orders are generally quashed and set aside by the Court. It is also seen that because of quashing of previous detention order, competent authority could not consider the grounds of detention under such order which is already quashed as a ground for detention for subsequent offences by the same detenue. However, when competent authorities are not abiding all other cited cases while passing the order of detention based upon three offences, it is surprising to note that at no point of time they challenged the observation of any Court that when previous order of detention has been quashed, it cannot be considered in subsequent detention. It goes without saying that if a particular detenue continuous to commit the similar offences repeatedly, and if he is required to be detained repeatedly then atleast at some point of time, the competent authority shall compile all the information and shall consider it for fresh detention order as and when necessary and shall produce all such information before the Court so as to avoid the quashing of such detention order. If competent authority fails to take care of such exercise and when in impugned order of detention all such facts were not disclosed or considered for passing such order, the detention order is required to be dealt with as it is without considering the additional disclosure in affidavit-in-reply by the respondents.

7.1 In the present case, it seems that petitioner has been detained several times but at present, the detention order under challenge does not disclose all such facts so as to enable the petitioner to properly represent his case. Hence, there is no option but to consider that present order of

detention is solely based upon a three offence. Therefore, considering the settled legal position that no person can be detained for a three offences, the Court has no option but to quash and set aside the order of detention, irrespective of quantity of LIQUOR found from the detenue and other material that might have been found in the affidavit – in – reply.

7.2 In view of above facts and circumstances, it would be necessary to observe that the competent authority is not precluded to disclose all material facts while detaining the petitioner if so require for any offence that he might commit hereinafter. In other words, though impugned order is quashed and set aside at present, it would not come in way of the competent authority for quoting such FIR and order of detention, thereby to treat petitioner as a habitual offender in case of commission of offence repeatedly.

7.3 No doubt, neither the possibility of launching of a criminal proceedings nor pendency of any criminal proceedings is an absolute bar to an order of preventive detention. But, failure of the detaining authority to consider the possibility of either launching or pendency of criminal proceedings may, in the circumstances of a case, lead to the conclusions that the the detaining authority has not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Since there is an allegation that the order of detention is issued in a mechanical manner without keeping in mind whether it was necessary to make such an order when an ordinary criminal proceedings could well serve the purpose. The detaining authority must satisfy the court that the question too was borne in mind before the order of detention was made. In the

case on hand, the detaining authority failed to satisfy the court that the detaining authority so bore the question in mind and, therefore, the court is justified in drawing the inference that there was no application of mind by detaining authority to the vital question whether it was necessary to preventively detain the detenue. It is also fruitful to refer to the decision of the Hon'ble Apex Court rendered in the case of Rekha V/s. State of Tamil Nadu through Secretary to Government and another reported in (2011)5 SCC 244 wherein, it is observed by the Hon'ble Apex Court that if a person is liable to be tried, or is actually being tried for a criminal offence but the ordinary criminal law will not be able to deal with the situation, then and only then, preventive detention be taken recourse to.

8. In the result, the petition is allowed. The order of detention dated 03/03/2014 passed by the respondent No. 1 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.)

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