

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 11026 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI**

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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 or any order made thereunder ?	

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RINABEN LATIFBHAI SINDHI....Petitioner(s)

Versus

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

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Appearance:

MR AMRISH K PANDYA, ADVOCATE for the Petitioner(s) No. 1

GOVERNMENT PLEADER for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI**Date : 08/05/2015****ORAL JUDGMENT**

1. Mr. Amrish K. Pandya, learned counsel appearing for the petitioner submitted that the co-detenu, Shri Hanifbhai

Ibrahimbhai Sindhi, had filed writ petition being S.C.A. No. 10912 of 2014 challenging the order of detention at the pre-execution stage. The said petition came to be disposed of vide order dated 10.11.2014, which is reproduced hereunder;

“1. By way of this petition, the detenue has challenged the order of detention dated 27/06/2014 passed by respondent No.2 herein – District Magistrate, Banaskantha, under the provisions of sub-sec(2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “PASA Act”).

2. Learned advocate, Mr.Amrish Pandya, appearing for the petitioner-detenue has invited my attention to the order of detention dated 27/06/2014, by which, the detenue was arrested and sent to Ahmedabad Central Jail. The ground of detaining the accused is that one offence was registered against the petitioner under the provisions of Sections 5, 6, 8 & 10 of the Gujarat Animals Preservation Act, 1954; subsections of Section 11 of the Prevention of Cruelty to Animals Act, 1960 and Sections 177 & 184 of the M.V. Act and Sections 279 and 114 of the Indian Penal Code. He is, therefore, a “cruel person” as defined under Section 2(bbb) of the PASA Act.

Learned advocate appearing for the petitioner has submitted that, except this solitary offence, there is no material with the detaining authority to detain the petitioner under the provisions of the PASA Act. It is submitted that the order is vitiated because only on the basis of one offence registered against the petitioner and in absence of any other material to show involvement of the petitioner in similar activities, the detaining authority has recorded a subjective satisfaction that the petitioner is a “cruel person”. The definition of “cruel person” requires habitual involvement and, therefore, the subjective satisfaction and the consequential order are vitiated.

3. Learned AGP Mr.Jayswal, appearing for the State has opposed this petition.

4. Having regard to the contentions raised on behalf of the petitioner, it would be necessary to refer to the definition of “cruel person” as given in Section 2(bbb) of the Gujarat Prevention of Antisocial Activities Act, 1985, which runs as under:-

“2(bbb) “cruel person” means a person who either by himself or as member or leader of a gang habitually commits or attempts to commit
abets the commission of an offence punishable under
Section 8 of the Bombay Animal Preservation Act, 1954
(Bom.LXXII of 1954)”.

5. It is clear from reading of the definition that the person to be branded as a “cruel person” has to be either a member or leader of a gang habitually committing or attempting to commit or abetting the commission of offence punishable under Section 8 of the Bombay Animal Preservation Act, 1954. The term “habitually” examined from any angle, literal or legal, would require presence of an element of repetitiveness. In the instant case, barring one offence registered against the petitioner, there was no material before the detaining authority to record a satisfaction that the petitioner is habitual or repetitively involved in the offence.

6. Under the circumstances, the subjective satisfaction that the petitioner is a “cruel person” on the basis of which he has been detained, is vitiated.

7. In view of the above facts and circumstances of the case, the petition is allowed. The impugned order of detention dated 27/06/2014 passed by the respondent authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if he is not required to be detained in connection with any other case. Rule is made absolute accordingly.

Direct service is permitted.”

2. Since the order of detention of the other co-accused has been quashed by a coordinate Bench of this Court, the order of detention in respect of the present petitioner is also quashed.

The petition is, accordingly, allowed. Rule is made absolute.

Direct service is permitted.

(K.S.JHAVERI, J.)

Vahid