IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1669 of 2018

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 or any order made thereunder ?	

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DILIP @ LALO ARVINDBHAI MAKWANA

Versus

COMMISSIONER OF POLICE, AHMEDABAD CITY

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Appearance:
MR DARSHAN P DAVE(5928) for the PETITIONER(s) No. 1
MR VISHRUT JANI, AGP for the RESPONDENT(s) No. 2
GOVERNMENT PLEADER(1) for the RESPONDENT(s) No. 3
RULE SERVED BY DS(65) for the RESPONDENT(s) No. 1,2

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

Date : 28/03/2018

ORAL JUDGMENT

1. This petition is directed against the order of detention dated 25.12.2017 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 detenu as a "bootlegger" as defined under section 2(b) of the Act.

2. Learned advocate for the detenu submits registration of FIRs itself cannot lead to disturbance of even tempo of public life and, therefore, the public order. He further 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 Hon'ble Apex Court in the case of **Piyush Kantilal Mehta Vs. Commissioner of Police**, reported in **AIR 1989 S.C. 491**, **Anil Dey Vs. 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 Vs. 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 detenu.

3. Learned AGP submitted that registration of FIR/s 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/s 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 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. 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 detenu. However, when competent authorities are not abiding all other cited cases while passing the order of detention based upon solitary offence, 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

detenu continuous to commit the similar offence 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.

6. 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 required 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 FIRs and order of detention, thereby to treat petitioner as a habitual offender in case of commission of offence repeatedly.

7. In the result, the petition is allowed. The order of detention dated 25.12.2017 passed by the respondent No.1 is quashed and set aside. The detenu 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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