

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11498 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE SONIA GOKANI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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NARENDRA @ NANYO LALABHAI KAHAR

Versus

STATE OF GUJARAT

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Appearance:

MS JAYSHREE C BHATT(170) for the Petitioner(s) No. 1

MR UTKARSH SHARMA, ASST. GOVERNMENT PLEADER(1) for the Respondent(s) No. 1

RULE SERVED(64) for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI**Date : 30/12/2020****ORAL JUDGMENT**

1. The present petition is preferred seeking to challenge the order of detention being PCB/PASA/DTN/59/2020

dated 12.07.2020 passed by the respondent no.2 – Commissioner of Police, Vadodara City, in exercise of the powers conferred under sub-section (1) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as the ‘PASA Act’) with a view to prevent the detainee from acting in many manner prejudicial to the maintenance of the public order.

2. The authority on the basis of the solitary offence being CR No. 0341 of 2020 registered with Panigate Police Station for the offences punishable under Sections 65(E), 98(2), 116(B) and 81 of the Gujarat Prohibition Act, has passed the order impugned.

3. The prayers sought for in this petition are as follows: -
“(A) Your Lordships may be pleased to admit and allow this petition;

(B) Your Lordships may be pleased to pass any appropriate writ and/or writ of mandamus and/or writ of habeas corpus be issued and the order of detention date: 12/07/2020 passed by the respondent no.2 herein at Annexure-A may be set aside and the respondents be directed to set the detainee at liberty forthwith.

(C) Be pleased to grant such other and further reliefs which may deem fit and proper in the interest of justice.”

4. This Court (Corus: Ms. Sangeeta K. Vishen, J.) issued rule on 06.07.2020 and the matter has been fixed for final hearing where learned advocate Ms. Jayshree Bhatt appearing for the petitioner has been heard. She has urged

that the petitioner has solitary offence against him. No order of detention could have been passed on the ground that this offence which is the only offence considered by the authority concerned. She further has urged that there is no involvement as such, of the present petitioner and without any basis, the name of the petitioner has been dragged into the matter. She further has urged that being a 'Bootlegger' alone is not sufficient. There is no material with the authority to indicate that activities of the petitioner have caused in any manner prejudice to the public order and therefore also, the order deserves interference.

5. Learned Assistant Government Pleader Mr. Utkarsh Sharma appearing for the respondent – State has objected to any kind of interference as according to him, the authority has chosen to apply its mind carefully to the material which had been placed before it and having noticed that the activities of the petitioner surely is affecting the public health and order and would likely affect the same in future, it invoke the powers under sub-section (1) of Section 3 of the PASA Act and there is no requirement for the Court to question the same.

6. Examining the law on the subject as the petitioner has been branded as a bootlegger by the detaining authority, while invoking powers under Section 3(1) of the PASA Act, the discussion made by this Court in case of ***HARESH @ HARI CHANDRAKANT BRAHAMAKSHATRIYA vs. STATE OF GUJARAT [Special Civil Application No.***

11431 of 2020] dated 24.12.2020 deserves reproduction: -

“5. Having, thus, heard both the sides and having carefully examined the material on record, profitable it would be to refer to the definition of the ‘Bootlegger’ as defined under Section 2(b) of the PASA Act, which reads thus:

“(b) "bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;”

5.1 Thus, bootlegger is a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 and the rules and orders made there under or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material, whatsoever, in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing. Further, sub-Section (4)

to Section 3 of the PASA Act provides that a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order", when such a person is engaged in or is making preparation for engaging in any activities, whether, as a bootlegger or common gambling house paper or person or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Further, the explanation to this section provides that the public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, inter alia, if, any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Therefore, if, the State is of the opinion that it is necessary to prevent such a person from indulging into similar such activities, it can detain such a person, as provided under sub-Section (1) of Section 3 of the PASA Act.

*5.2 Thus, as is held in the case of **'KANUBHAI ZALA'** (Supra), the Court is not to interfere, if, it finds that the subjective satisfaction arrived at by the State authorities is based on the material presented before it and the authority concerned has applied its mind and its potentiality and has acted to prevent a person from indulging into activities, in any manner, prejudicial to the maintenance of the public order. The Court may, at the same time, cannot disregard the marked distinction, which has been made out over the period of time by various decisions of the Apex Court, such as in the case of **'PUSHKER MUKHERJEE V. STATE OF WEST BENGAL'**, AIR 1970 SC 852, where, the Apex Court emphatically held that the activities which causes*

the issue of law and order may not be regarded as the activities, which may prejudice the maintenance of the public order. However, the act of crime shall be capable of causing a dent in the law and order situation, but that, per se may not be a ground for invoking the powers vested in the authority under the preventive detention law. The case of law and order are to be dealt with under the powers vested in the authorities under the provisions of the ordinary criminal law. However, a person cannot be detained merely on the ground that there is disturbance of public order and there shall have to be a grave form, which affects the community or the public at large and a case shall have to be made out before the Court to uphold the decision of the detaining authority in invoking the powers of law of detention.

5.3 In ‘ARUN GHOSH V. STATE OF WEST BENGAL’, (1970) 1 SCC 98, the Hon’ble Supreme Court has observed and held that the Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals, which do not disturb the society to the extent of causing a general disturbance of public tranquility. The Apex Court, further, emphasized that it is the degree of disturbance and its effect upon the life of the community in a locality, which determines, whether the disturbance amounts only to a breach of law and order or not.

5.4 This Court notices that there is absence of report of FSL and also on account of absence of any material on record which would indicate that there are possibilities of reoccurrence which again are having potentiality of affecting adversely public health or causing danger to the life or the

public health. Undoubtedly, the State follows the policy of the being a 'Dry state' and the activities of the bootlegging is stringently being dealt with under the special law of the Gujarat Prohibition Act. The philosophy, which is being practiced, is that if any activity is adversely affecting or likely to adversely affect the maintenance of public health, such activities need to be also curtailed, prevented and dealt with strictly in accordance with provisions of special law. However, noticing the fact that the petitioner, in the instant case, is neither the owner of the vehicle nor was found with the same, and this being a solitary offence and also in absence of any other material , emerging on the record, the order of detention cannot be sustained. This court, therefore, deems it appropriate to interfere with the order of detention, by holding that the mere disturbance of law and order would not entitle the respondent-authority to detain a person under the preventive detention law."

7. Reverting to the facts of the instant case, the only FIR which has been depended upon by the authority concerned, is registered with Panigate Police Station. Although, it is relevant to note that the present petitioner has got in all seven offences against him which are of the year 2016, 2017, 2018, 2019 and 2020, for the purpose of invocation of powers, the offence of the year 2020 has been regarded and of course, there has been a reference of the petitioner continuing his activities from the year 2016.

8. If one looks at the FIR which is depended upon to arrive at a subjective satisfaction, one Dilipsinh Parvatsinh, an unarmed head constable - the complainant on a tip off had approached the place of offence where he found that

Narendra – the present petitioner and his associates had brought Indian made English liquor in Eicher Tempo bearing number GJ-09-Z-8375 and it was stored at house no.31. When they were attempting to run away, one person was intercepted. He named himself as Arvind Devipoojak who had revealed that Narendra and his associates namely Krunal, Nilesh and Shailesh had brought the beer bottles in the Eicher Tempo. The ownership of the house was of the Narendra. The total liquor worth Rs. 2,77,000/- has been found.

8.1. It is to be noted that the present petitioner also had been interrogated who was not found at the time of incident and after two months when he was found, in his interrogation, he revealed that, he had agreed to the proposal of his friend Krunal who wanted the contraband liquor to be stored. He had agreed for the sum of Rs. 20,000/- as due to corona, there was no work and he was in a dire financial need. He was wanted criminal in this matter and later on he and Shailesh both had moved an application for regular bail before the Court of learned District and Sessions Judge, Vadodara. The same had been granted by the Court concerned on 04.07.2020 by observing that this applicant has a similar role of that of other co-accused and the entire investigation was over. The High Court had released Nilesh and Krunal who had ordered the liquor and on the basis of parity, the Court granted regular bail to these persons also.

8.2. It is to be noted that the entire case is based on co-accused's version which is not admissible. His version recorded during the interrogation also is not admissible however, the same has been depended upon by the authority to link him with the crime in question. He, of course, has been named by the co-accused who in presence of the complainant – police personnel had named this man. Independently, there does not appear to be any admissible evidence presently on record, even going by the ordinary law of the country.

9. It is not the solitary offence in true sense that has weighed with the authority concerned, as against this man, various offences have been registered from the year 2016 onwards. His case, therefore, cannot be based on the satisfaction of authority of the case being solitary, since in his case, it is not a solitary offence, but, it is a case of repeated activities of prohibited articles over a period of time. Even repetitive engagement in the very activity of bootlegging is also not a requirement of the law. What is needed is that the acts or activities of the person may prejudice the public order or compromise the public health and he can be detained by the authority under these provisions, in such cases even for a solitary offence.

10. With no legally admissible material to connect him in the matter on hand, except the version of the co-accused and his own admission before the police of having permitted his house to be a store house for contraband liquor ordered

by the Krunal – co-accused, this petition deserves consideration where the Court needs to show indulgence by holding that subjective satisfaction arrived at by the authority concerned deserves interference.

11. Resultantly, this petition is allowed. The impugned order dated 12.07.2020 passed by the respondent no.2 under sub-section (2) of Section 3 of the PASA Act is quashed and set aside. The petitioner is ordered to be set at liberty forthwith if, he is not required in custody, in connection with any other case.

11.1. While so doing, the petitioner is cautioned to comply with the conditions imposed by the trial Court, while releasing him on regular bail, scrupulously and any breach of the same shall entitle the respondent authority to take stringent actions against the petitioner and also necessitate the action on the part of the respondent authority of getting his bail cancelled.

11.2. To ensure that his communication with his associates does not continue, it is desirable to keep him outside the City of Vadodara for a period of six months so that severing of ties may help for his better future course of life. He shall furnish his temporary address to the Police Commissioner, Vadodara City within 3 days of his release for follow up actions, if needed. He shall also direct his marking presence at the nearest police station of his new address on the 15th day of English calendar month.

11.3. The petitioner shall, therefore, not enter the City of Vadodara for a period of six months and thereafter, shall mark his presence on every 15th day of English calendar month, before the nearest police station of his residence, for a period of six months thereafter.

11.4. Office to send a copy of this order to the concerned authority through e-mail or Fax, forthwith. Rule is made absolute, accordingly.

(SONIA GOKANI, J)

MISHRA AMIT V./Bhoomi