IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20145 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE **Sd/-**

and
HONOURABLE MR. JUSTICE SAMIR J. DAVE **Sd/-**

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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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MADHUSING DEVISING AMARSING RAJPUT SISODIYA
Versus
THE POLICE COMMISSIONER & ORS.

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Appearance:
MR MD. MOHSIN M SHAIKH(12400) for the Petitioner(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 1,3
MR ROHAN RAVAL, AGP for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE A.Y. KOGJE**
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 08/05/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE SAMIR J. DAVE)

1. By way of this petition, the petitioner-detenue has challenged the order of detention dated 11.11.2023 passed by the Commissioner of Police, Ahmedabad City in exercise of powers conferred on him under sub-section(1) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the PASA Act') and has also prayed for an order to set him free from detention.

2. This Court has taken notice of the fact that the petitioner has been detained as a **'bootlegger'**. This Court has also taken notice of the fact that in the grounds of detention order dated **11.11.2023**, the detaining authority has relied upon 2 (two) cases registered with the Aslali Police Station and Sarkhej Police Station for the offence punishable under Sections 65(A)(E), 66(1)(B), 81, 83, 98(2), 116, 1(B) of the Prohibition Act and under Sections 465, 471 of the IPC.

3. Section 2(b) of the PASA Act defines the term **'bootlegger',** which reads as under:-

> "*S.2(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 (Bom.XXV of 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 animals, 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."

4. Section 3 of the PASA Act speaks about the power to make orders detaining certain persons. It reads as under:

"*Sec.3 Power to make orders detaining certain persons:*

(1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, has a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial

to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger 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.

Explanation:- For the purpose of this sub-section, 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."

5. In this connection, it is required to be referred to a decision of the Supreme Court in ***Pushker Mukherjee v/ s. State of West Bengal*** [AIR 1970 SC 852], where the distinction between 'law and order' and 'public order' has been clearly laid down. The Hon'ble Supreme Court has observed as follows :

> "*Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of*

> *any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."*

6. Having heard the learned counsel for the parties and having gone through the grounds of detention, in the opinion of this Court, the detaining authority has failed to substantiate that the alleged antisocial activities of the petitioner-detenue adversely affect or are likely to affect adversely the maintenance of public order. Just because two cases have been registered against the petitioner-detenue under the Prohibition Act, by itself, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community much less public health. It may be that the petitioner-detenue is a 'bootlegger' within the meaning of Section 2(b) of the PASA Act, but merely because he is a 'bootlegger' he cannot be preventively detained under the provisions of the PASA Act unless, as

laid down in sub-section (4) of Section 3 of the PASA Act, his activities as a 'bootlegger' affect adversely or are likely to affect adversely the maintenance of public order.

7. In the result, this petition succeeds and is hereby allowed. The order of detention dated **11.11.2023** passed by the respondent authority is hereby ordered to be quashed and the detenue is ordered to be set at liberty forthwith if he is not required in any other case.

8. Rule is made absolute. Direct service is permitted.

Sd/-
(A.Y. KOGJE, J)

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR