



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21168 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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**MOHD. SOHEL @ SHAHRUKH @ BHATHENA S/O MOHD. AIYUB
MALBARI THRU MOTHER SAHERABANU MOHD.AIYUB MALBARI**

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MR PRAJAPATI(1532) for the Petitioner(s) No. 1

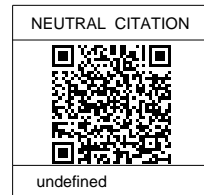
MR. ROHAN H. RAVAL, AGP for the Respondent(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2

GOVERNMENT PLEADER for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE



and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 09/05/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

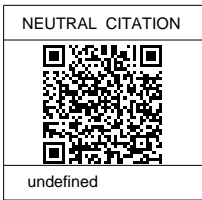
1. This petition under Article 226 of the Constitution of India is filed for following relief:-

“A) Your Lordships be pleased to issue writ of Habeas Corpus or any other appropriate, writ order or direction and be pleased to quash and set aside the detention order no.PCB/DTN/PASA/925/2023 dated 13.11.2023 (Annexure-A) passed by the detaining authority under the provision of the Gujarat Prevention of Anti-Social Activities Act, 1985 as being illegal, invalid, null and void, arbitrary, suffers from total non application of mind and violative of Art.14, 19, 21 and 22 of the Constitution of India;

B) to D) XXXXX”

2. Thus, essentially, the challenge is to the order of detention dated 13.11.2023 passed by the Police Commissioner, Surat, respondent No.2 herein, by which the petitioner has been detained as a “bootlegger” based on a solitary offence registered against him.

3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground that registration of a solitary offence under the sections of the Gujarat Prohibition Act by itself cannot bring the case of the detenu within the purview of definition provided under section 2(b) of the Act. Further, learned Advocate for the detenu submits that the alleged illegal activity likely to be carried out or alleged to have been carried out ,



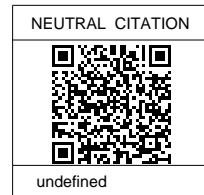
cannot have any nexus or bearing with the maintenance of public order. Except the statement of witnesses, registration of above FIR/s and the Panchnama drawn in pursuance of investigation, no other relevant and cogent material is on record connecting the alleged anti-social activity of the detinue with breach of public order.

3.1 Learned advocate for the petitioner further submits that it is not possible to hold, on the basis of the facts of the present case, that the alleged activity of the detinue with respect to the solitary criminal case had affected the even tempo of society causing threat to the very existence of normal and routine life of the people at large.

4. Learned AGP for the respondent State supported the detention order passed by the respondent authority and submitted that sufficient material and evidence was found against the detinue during the course of investigation, which indicate that the detinue is in the habit of indulging in activity, as defined under section 2(b) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and the same deserves to be upheld by this Court.

5. Having heard learned advocates for the parties and considering the facts and circumstances of the case, it appears that the grounds of detention indicate registration of solitary FIR, the details of which are as under:-

| Sr. No. | Name of Police Station | CR No. and date | Sections | Date of bail order |
|---------|-------------------------|---|---|--------------------|
| 1 | Kapodara Police Station | 11210022232004 of 2023 dated 31.10.2023 | 65(E), 81, 98(2) of the Prohibition Act | 12.11.2023 |

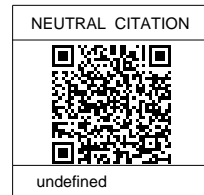


6. The order of detention came to be passed on 13.11.2023. The State could have resorted to due process of law by filing an application for cancellation of bail, which would have been sufficient in preventing the petitioner from indulging in further offence, particularly when, the petitioner has been granted bail in connection with the offence on which the detaining authority has relied upon to arrive at a subjective satisfaction.

7. The fact that the petitioner has been enlarged on bail by the Court of competent jurisdiction and the detention order does not reflect application of mind to the fact that detaining authority has considered cancellation of bail as an ineffective method to curtail the alleged illegal activities of the petitioner suggests that the detaining authority has not taken into consideration the lesser drastic remedy of cancellation of bail and thus, the subjective satisfaction of the detaining authority stood vitiated.

8. The subjective satisfaction would stand vitiated as is held in recent decision of the Hon'ble Supreme Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors.** reported in **2023 (9) SCC 633**, the Hon'ble Supreme Court has made following observations in para 19 as under:-

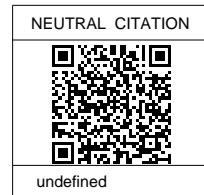
“19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.”



9. The subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law inasmuch as the offences alleged in the FIR cannot have any bearing on “public order” as required under the Act since other relevant penal laws are sufficient enough to take care of the situation. Further, the allegations levelled against the detenu cannot be said to be germane for the purpose of bringing the detenu within the meaning of section 2(b) of the Act. Unless and until there is material to suggest that the person has become a threat or menace to the society, so as to disturb the whole tempo of society and that the social apparatus is in peril at the instance of such person, the alleged act cannot be sufficient to attract detention law.

10. The Court relies upon the observations made by this Court in a reported judgment in the case of **Sohanlal Surjaram Visnoi**, reported in **2004 (2) GLR 1051**, wherein in para-7 the Court has observed as under:-

“7. At the outset, it may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in toto. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of "public order", and which needs to be controlled and curbed preventively. There must be convincing reasons and justifiable material that the impugned activity or action is likely to cause adverse and prejudicial impact on the maintenance of "public order". Emphasis is laid on "public order" and not "law and order" which belongs to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the PASA Act, and detailed factual

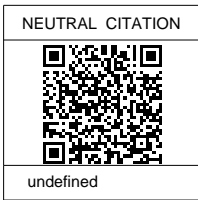


matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "public order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "public order", and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, and in this context, in exercise of the powers under Article 226 of the Constitution of India, this Court is left with no alternative in this group of petitions, but to quash and set aside the orders in each matter, with the result that all the petitions are required to be allowed while quashing and setting aside the detention orders passed against detenus in this group. The view which this Court has taken in this group of petitions is also reinforced by the observations and directions contained in the latest decision of the Hon ble Supreme Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma V/s. State of Tamilnadu and others, reported in (2003)2 SCC 313.”

11. In case of ***Raju Manubhai Lahu Vs. State of Gujarat & Ors.*** in **Special Civil Application No.2322 of 2019** vide order dated 03.05.2019, this Court in para-8 has observed that mere selling or possession any Indian made foreign liquor cannot cause or likely to cause any harm, danger, alarm or feeling of insecurity amongst general public or any section thereof.

12. A coordinate Bench of this Court in the case of ***Vasava Umeshbhai Laxmanbhai Vs. State of Gujarat & Ors.*** has held in para-7 as under:-

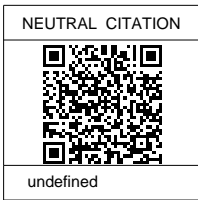
“7. Having heard the learned counsel for the parties ° and having gone through the grounds of detention, ; in my opinion, the detaining authority has failed to substantiate that the alleged antisocial activities of the petitioner-detente adversely affect or are likely to affect adversely the maintenance of public order. Just because a case has been



registered against the petitioner: detinue under the Prohibition Act, by itself, does 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-detente 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.”

13. The Court has taken into consideration the fact that the detaining authority has passed the order of detention on the very next day of the petitioner being enlarged on regular bail on 12.11.2023. In the opinion of the Court, the detaining authority has acted in hot haste and in mechanical manner, as the sponsoring authority has placed the proposal along with the grounds of detention only after the petitioner was enlarged on regular bail, and immediately on the next day, the order of detention has been passed. In the opinion of the Court, the subjective satisfaction, through application of mind, has not been arrived at by the detaining authority.

14. The Court has also taken into consideration the subjective satisfaction arrived at by the detaining authority whereby it has concluded that the activity of the petitioner is detrimental to public health and therefore, amounts to breach of public order. However, though the detaining authority has referred to possible adverse effect on public health, there is no contemporaneous material or anything on



record, which could support the conclusion of the detaining authority that the sale of liquor at the behest of the petitioner has resulted in disturbance of public order in the society in any manner or that the consumption of liquor so sold by the petitioner has resulted in damage to public health. There is also no FSL report on record of the case. In absence of any material on record, it was not open for the detaining authority to arrive at such conclusion and hence, the subjective satisfaction of the detaining authority is vitiated.

15. In view of above, we are inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act.

16. In the result, the present petition is hereby allowed and the impugned order of detention dated 13.11.2023 passed by the respondent-detaining authority is hereby quashed and set aside. The detinue is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. **Direct service** is permitted.

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

Sd/-
(SAMIR J. DAVE,J)

PARESH SOMPUA