IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 582 of 2024

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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PADMABEN @ PINKY NIRAJKUMAR RATHOD THROUGH SIMRAN NIRAJKUMAR RATHOD
Versus
COMMISSIONER OF POLICE & ORS.

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Appearance:
MR ATIT D THAKORE(5290) for the Petitioner(s) No. 1
MR YUVRAJ BRAHMBHATT, AGP for the Respondent(s) No. 2
GOVERNMENT PLEADER for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 1,2

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

Date : 06/05/2024

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) This Honourable Court may be pleased to issue a

writ of Habeas Corpus or writ of certiorari or any other appropriate writ, order and/or directions quashing and setting aside the detention order dated 28.10.2023 passed by the Respondent No.1 (Ann.: A to this petition) and further be pleased to direct the respondents to release the petitioner detenue from the detention forthwith;

(B) @ (C) xxxxx"

2. Thus, essentially, the challenge is to the order of detention dated 28.10.2023 passed by the Police Commissioner, Ahmedabad, respondent No.1 herein, by which the petitioner has been detained as a "bootlegger" as defined under section 2(b) of the Act based on four offences registered against him, details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Sardarnagar Police Station	11191040230164 of 2023 dated 29.01.2023	66(1)(B), 65(A)(E), 81 and 116(1)(B) of the Prohibition Act	04.03.2023
2	Sardarnagar Police Station	11191040231340 of 2023 dated 06.06.2023	66(1)(B), 65(E) and 81 of the Prohibition Act	19.06.2023
3	Sardarnagar Police Station	11191040231761 of 2023 dated 04.08.2023	66(1)(B), 65(A)(E), 68, 81, 83, 84, 86, 98(2) and 116 and of the Prohibition Act	10.10.2023
4	Sardarnagar Police Station	11191040231894 of 2023 dated 21.08.2023	66(B), 81, 65(A)(E) and 116(1)(B) of the Prohibition Act	27.10.2023

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed

and set aside as registration of the offences under Sections of the Prohibition Act by itself cannot bring the case of the detenue within the purview of definition under section 2(b) of the Act. Further, learned advocate for the detenue submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of public order.

4. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detenue indicate that detenue is in habit of indulging into the 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 detention order deserves to be upheld by this Court.

5. Having heard learned Advocates for the parties and having perused documents on record, it appears that 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/s cannot have any bearing on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of section 2(b) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(b) of the Act. Except general statements, there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the public order.

6. The Court has also taken into consideration the fact that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction and the detention order does not reflect application of mind to the fact that the Detaining Authority has considered cancellation of bail to be ineffective method to curtail activities of the petitioner. Therefore, in the opinion of the Court, the Detaining Authority not having taken into consideration the cancellation of bail option. 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 detenue 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."

7. The Court also finds that though the detaining authority has concluded that the so called activity of the petitioner has led to harm public health, however, there is no material or data on record to support such subjective satisfaction. Further, even FSL report is not on record. Therefore, the subjective satisfaction that the public health is adversely affected is vitiated.

8. It is also found that there is no live link between the first two offences as the first offence was committed on 29.01.2023 and the second on 06.06.2023.

9. The Court also finds that the detention order is passed very next day when the petitioner was enlarged on regular bail in the fourth offence on 27.10.2023. Hence, there is mechanical exercise of application of mind.

10. 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.

11. In the result, the present petition is hereby allowed and the impugned order of detention dated 28.10.2023 passed by the respondent–detaining authority is hereby quashed and set aside. The detenue 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)

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