

Gujarat High Court

Aziz vs State on 16 July, 2010

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Gujarat High Court Case Information System

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SCA/6987/2010    2/ 4    JUDGMENT

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL  
CIVIL APPLICATION No. 6987 of 2010

For  
Approval and Signature:

HONOURABLE  
MR. JUSTICE Z.K. SAIYED

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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, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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AZIZ  
ABDUL MAJID BANARASI - Petitioner(s)

Versus

STATE  
OF GUJARAT NOTICE TO BE SERVED THRO' & 2 - Respondent(s)

=====

Appearance  
:  
MR  
AR SHAIKH for Petitioner(s) : 1,  
MR JANAK RAVAL ASSISTANT  
GOVERNMENT PLEADER for Respondent(s) : 1, 3,  
RULE SERVED BY DS for  
Respondent(s) : 1 -  
2.

=====

CORAM

:

HONOURABLE

MR.JUSTICE Z.K.SAIYED

Date  
: 16/07/2010

ORAL  
JUDGMENT

1. By filing present petition the petitioner detenu under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order of detention dated 25.3.2010 passed by the respondent No.2 District Magistrate, Surat City, in exercise of power under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short PASA Act ). The petitioner is branded as bootlegger .
2. Heard the learned Advocate for the petitioner and learned AGP Mr. Janak Raval for the respondents. No Affidavit in reply is filed by the respondents controverting the averments made by the petitioner.
3. The petitioner came to be detained as bootlegger on his involvement in the offence registered against the petitioner.
4. It has been submitted by the learned Counsel for the petitioner that it is a settled legal position that on registration of single solitary offences, no order of detention could have been passed as petitioner detenu cannot be branded as bootlegger . It has been further submitted that the activities of the petitioner cannot be said to be injurious to the public health or public order. It has been further submitted by the learned Counsel for the petitioner that there is gross delay in passing the order of detention as well as there is gross delay in executing the order of detention.
5. I have gone through the grounds of detention and considered the arguments advanced by the learned Counsel for the petitioner as well as the learned A.G.P.
6. The Court is of the opinion that there is much substance in the arguments advanced by learned Counsel for the petitioner. It is seen from the grounds that a general statement has been made by the detaining authority that consuming liquor is injurious to health. In fact, a perusal of the order passed by the detaining authority shows that the grounds which are mentioned in the order are in reference to the situation of law and order and not public order . Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind and the impugned order, therefore, deserves to be quashed and set aside.
7. Except the general statement, there is no material on record which shows that the petitioner

detenue is carrying out illegal activities of selling liquor which is harmful to the health of the public. In the case of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI v/s. POLICE COMMISSIONER, Surat, reported in 2001 (1) GLH 393, having considered the decision of the Hon'ble Apex Court in the case of Ram manohar Lohia v/s. State of Bihar, reported in AIR 1966 SC 740, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of law and order and not public Order .

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings that there is threat to the 'public order' and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order of detention dated 25.3.2010 passed by the District Magistrate, Surat City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

(Z.K.SAIYED, J.) ynvyas    Top