

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 15897 of 2023
With
CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 1 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 15897 of 2023

FOR APPROVAL AND SIGNATURE:

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

and

HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN **Sd/-**

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

HITESHBHAI @ HITO LALJIBHAI RABARI THRO LALJIBHAI

RAYBHANDHAI RABARI

Versus

STATE OF GUJARAT

Appearance:

O I PATHAN(7684) for the Petitioner(s) No. 1
MR PRANAV DHAGAT, AGP for the Respondent(s) No. 1
GOVERNMENT PLEADER for the Respondent(s) No. 3
SERVED BY RPAD (R) for the Respondent(s) No. 1,2

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 12/01/2024

**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 LORDSHIP be pleased to issue appropriate writ, order or directions of this Hon’ble High Court, quashing and setting aside the detention order dated 31/08/2023 at Annexure ‘A’ to the petition placing the petitioner under preventive detention, in purported exercise of their powers under the Gujarat Prevention of Antisocial Activities Act, 1985, as being illegal, null and void and further be pleased to release the petitioner forthwith;”

1.1 Thus, essentially, the challenge is to the order of detention dated 31.08.2023 passed by the Police Commissioner, Vadodara, respondent No.2 herein, by which the petitioner has been detained as a “bootlegger” based on solitary offence registered against him, the details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Manjalpur Police Station, Vadodara	C-11196003220216 of 2022 dated 08.03.2022	65(E), 81, 83, 98(2) and 108 of the Prohibition Act and Sections 465, 468, 471 and 120B of IPC	31.08.2023

2. Learned advocate for the petitioner submitted that the order of detention impugned in this petition deserves to be quashed

and set aside as registration of solitary offence under the Prohibition Act and IPC Sections by itself cannot bring the case of the detenu within the purview of definition under section 2(b) of the Act. Further, learned Advocate for the detenu 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. 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 detenu with breach of public order.

2.1 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 activity of the detenu with respect to solitary criminal case had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large.

3. 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 detenu indicate that detenu 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.

4. Having heard learned advocates for the parties and considering the facts and circumstances of the case, 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 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 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, 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, the act alleged cannot be sufficient to attract detention law. Except general statements, there is no material on record which shows that the detenu is acting in such a manner, which is dangerous to the public order. The order of the detaining authority does not reflect application of mind to the aspect that cancellation of bail can be an effective alternate to detention, 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.

5. The State has chosen not to file counter affidavit/reply so as to disturb the action invoking provisions of the PASA Act. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged.

6. In the decision of the Hon'ble Supreme Court in the case of ***Shaik Nazeen Vs. State of Telanga and Ors.*** rendered in Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 2022 dated 22.06.2022, the Hon'ble Supreme Court has made following observations in para 17:-

“17. 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.”

7. The Court relies upon the observations made by this Court in a reported judgment in the case of **Sohanal 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 detenu 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 detenu 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 Honorable Supreme Court in the case of *Panda Markup Dharma alias Hairband Markup Dharma Hardened Markup Dharma v. State of Tamil and others*, reported in (2003)2 CC 313."

8. In case of ***Raju Manubhai Lalu 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 among st general public or any section thereof or a grave or widespread danger to life, property or public health.

9. Separate Bench of this Court, in case of **Vasava Umeshbhai Laxmanbhai Vs. State of Gujarat & Ors.** in para-7 has held 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: detenue 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.”

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 31.08.2023 passed by the respondent-detaining authority 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.

12. In view of the order passed in the main petition, Civil Application does not survive. Disposed of accordingly.

Direct service is permitted.

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

SHITOLE

Sd/-
(RAJENDRA M. SAREEN,J)