IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19992 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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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 or any order made thereunder ?	

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NASIR NAZIRMOHAMED RANGREJ
Versus
COMMISSIONER OF POLICE AHMEDABAD & ORS.

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Appearance:
MR M I SHAIKH(13791) for the Petitioner(s) No. 1
MR MOHDDANISH M BAREJIA(10612) 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 : 01/05/2024

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 21/10/2023 passed by the Respondent No.1 (Ann.:A to this petition) in PCB/DTN/PASA/579/ 2023 and further be pleased to direct the respondents to release the petitioner detenu from the detention forthwith;"
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> (B) & (C) xxxxx"

2. Thus, essentially, the challenge is to the order of detention dated 19.10.2023 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 two 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	DCB Police Station	11191011230130 of 2023 dated 09.05.2023	65AE, 81 and 116 of the Prohibition Act	17.05.2023
2	Danilimda Police Station	11191012231064 of 2023 dated 26.09.2023	120A, 65AE, 81, 116B and 98(2) of the Prohibition Act	17.10.2023

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground 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. 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 detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder.

3.1 It is submitted that there is no FLS report on record. Therefore, the subjective satisfaction that the public health is adversely affected is vitiated.

3.2 It is submitted that page Nos.57, 103 and 115 of the detention order, on which the detaining authority has relied upon, are illegible. Learned Advocate has therefore, relied upon the

decision of this Court in the case of ***State of Manipur Vs. Buyamayum Abdul Hanan @ Anand***, reported in JT **2022 (10) SC, 264** and submitted that the Apex Court when found that the documents supplied along with the grounds of detention were either blurred copies and many of the documents requested by the detenue supplied in such facts the order of detention was ordered to be quashed and set aside.

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.

4.1 Learned AGP also submitted that earlier also, the petitioner was detained under PASA as bootlegger and therefore, he is a habitual offender.

5. To the aforesaid, in rejoinder, learned Advocate for the submitted that previous detention of the petitioner under PASA was revoked.

6. 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. 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. Therefore, the subjective satisfaction that the public health is adversely affected is vitiated.

7. 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."

8. The Court has examined the paper book containing illegible documents and finds that certain pages (57, 103 and 105) are hardly legible, thereby depriving the petitioner to make effective representation. In this connection, the Apex Court in the case of ***Buyamayum Abdul Hanan @ Anand*** **(supra)** has clearly held as under:

> "21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.
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> 22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and

> such information made in the grounds of detention enables him to make an effective representation.
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> 23. Proceeding on the principles which have now been settled by this Court, it was specifically raised by the respondents in their writ petition and the reference has been made in para 9 of the petition referred to(supra) and in the pleadings on record, there was no denial in the counter filed by the appellants before the High Court that the documents which were supplied and relied upon by the detaining authority were legible and that has not denied respondent no.1 in making effective representation while questioning the order of detention and once this fact remain uncontroverted from the records as being placed before the High Court in writ petition filed under Article 226 of the Constitution and the legal principles being settled, we find no substance in the submissions made by learned counsel for the appellants that merely because respondent no. 1 has failed to raise this question before the detaining authority which go into root of the matter to take away the right vested in the appellant/detenu in assailing the order of detention while availing the remedy available to him under Article 226 of the Constitution of India.
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> 24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment."

9. 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 FLS report is not on record. Therefore, the subjective satisfaction that the public health is adversely affected is vitiated.

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 21.10.2023 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.

12. Rule is made absolute accordingly.

Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

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