

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20946 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2023****In****R/SPECIAL CIVIL APPLICATION NO. 20946 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

NISHANT SANJAYKUMAR SHAH**Versus****STATE OF GUJARAT****Appearance:****MR HR PRAJAPATI(674) for the Petitioner(s) No. 1****MS NISHKA H PRAJAPATI(10717) for the Petitioner(s) No. 1****MR PRANAV DHAGAT, AGP for the Respondent(s) No. 1****GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3****SERVED BY RPAD (N) for the Respondent(s) No. 4****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 is under Article 226 of the Constitution of India the petitioner has prayed for the following reliefs:-

“(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 order of detention No.DTN/PDS/ATK/S.R.No. 58/2023 dated 04.12.2023 (Annexure-‘A’) passed by the detaining authority under the provisions of the prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 as being illegal, invalid, null and void, arbitrary, suffers from total non application of mind and violative of Art. 14,21 and 22 of the Constitution of India;”

2. Thus, essentially, the challenge is to the order of detention under the provisions of Prevention of Black Marketing and maintenance of Supplies of Essential Commodities Act, 1980 (herein after referred as ‘ the Act’), detaining the petitioner for carrying out alleged activities of black marketing.

3. Learned advocate for the petitioner has submitted that the petitioner is engaged in the business of chemical fertilizer, pesticides and hybrid seeds in the name and style of “Shree Agro Vallabh”. A surprise checking of the shop of the petitioner was undertaken on 28.10.2023 by the Inspecting Team of the Supplies Department and the petitioner was found in possession of essential

commodities like wheat and rice.

3.1 Learned advocate for the petitioner has taken this Court to the grounds of detention and submitted that in response to the show-cause notice issued under the provisions of the Act as well as the Public Distribution System (Control) Order, 2004, the society for the petitioner had submitted a detailed reply to explain the deficit of the grains to the extent that on account of the ongoing missionary work in the shop premises, the part of the grain was shifted to another location and therefore there was no actual deficit. Despite this explanation being given, the detaining authority has proceeded to pass the order of detention.

3.2 Learned advocate submitted that the grounds of the detention indicate that the subjective satisfaction of the detaining authority is based on the fact that the petitioner who would be facing an action under provisions of the 'Act', would be enlarged immediately on bail by the court of competent jurisdiction and therefore such subjective satisfaction is against the decision of the High Court in case of ***Vahidbhai Saiyedbhai Sheikh Vs. State of Gujarat*** reported in **2003(3) GLH 697**.

3.3 Learned advocate further submitted that the show-cause notice issued to the petitioner was of 03.11.2023 and thereafter the reply was submitted by the petitioner on 10.11.2023.

Despite that, an order of detention has been passed on 04.12.2023. Hence, there is delay. It is submitted that if the detaining authority is satisfied about the black marketing activity continued by the petitioner, then the delay is not been explained by the detaining authority and therefore, the detention of the petitioner henceforth would stand vitiated.

3.4 Learned advocate further submitted that there were other options which were provided under the concerned laws i.e to say the Essential Commodities Act as well as control order of Public Distribution System (Control) Order, 2004 which the authorities have already resorted to by suspending the license. Therefore there is no scope for the petitioner to indulge into similar activities and hence, the continued detention is required to be quashed and set aside.

4. Learned AGP Mr. Dhagat has objected to the grant of petition by relying upon the affidavit-in-reply of respondent no.2 and submitted that in addition to the order of detention it would be pertinent to draw attention to the fact that the said order of detention has been affirmed by the advisory board and the detention of the petitioner is continued under the recommendation of the Advisory Board dated 04.01.2024. Learned AGP further submitted that the grounds of the detention are clearly expressing the satisfaction of the detaining authority of the black marketing

activities of the petitioner and therefore, merely because there are no previous incidents about black marketing against the petitioner will not make advantage that is available to the petitioner as in the facts of the present itself the petitioner is found to be actively indulging the black marking activity and therefore there was deficit of grains meant for Public Distribution System.

5. In rejoinder, learned advocate for the petitioner submitted that though the affidavit-in-reply is filed, the same is only mere translation of grounds of detention, however, the affidavit-in-reply does not answer to the various grounds raised by the petitioner including the ground of vitiated subjective satisfaction of the detaining authority or delay caused in passing the order of detention.

6. Having considered the rival submissions of both the sides and having perused the documents placed on record, the petitioner has been detained under the order of detention dated 04.12.2023 passed by the District Magistrate of Panchmahals. The grounds of detention would indicate that on surprise inspection carried out on 28.10.2023, at the shop of the petitioner, where the inspection reveals that the petitioner was unauthorizadly possessing stock of wheat and rice. According, to the order of detention the articles were to be sold in open market at open-market at higher price.

7. It would be pertinent to observe that there is no evidence on record along with the grounds of detention to indicate that there is actual sale of deficit articles/grains in the open market at higher price. Therefore, the subjective satisfaction of the detaining authority is not based on the materials available on record.

8. The Court has taken into consideration the submission of learned advocate with regard to the subjective satisfaction arrived at by the detaining authority that the petitioner would continue to indulge in the black marketing activity and if a complaint is filed under Section 7 of the Essential Commodities Act the petitioner would be enlarged on bail by the Court of competent jurisdiction.

9. In the aforesaid, it would be pertinent to rely upon the decision of this Court in the case of **Vahidbhai (Supra)** wherein at paragraph no.8 and 9 the Court has proceeded to hold that when there is no complaint registered against the petitioner then there is no question that petitioner being arrested and thereafter being enlarged on bail. The subjective satisfaction reached by the detaining authority that the detenu was likely to continue his activities in future even after being enlarged on bail, when there was no material at all on record revealing such repeating tendency

on the part of the detenu, the order of detention, therefore, is vitiated by vice of non-application of mind.

10. The Court is of the view that the subjective satisfaction of the detaining authority that the petitioner would continue to indulge in the black marketing activities will also stand vitiated, in view of the fact that has come on record before this Court that the concerned authority has also issued a show-cause notice under the control order. In absence of any other antecedents and the present incident being only solitary incident it cannot be said that the petitioner would indulge in the black marketing activity.

11. In the result, the present petition is hereby allowed and the impugned order of detention dated 04.12.2023 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 matter, Civil Application does not survive. Disposed of accordingly.

Direct service is permitted.

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

Sd/-
(RAJENDRA M. SAREEN, J)

SHITOLE