

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21423 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

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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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GANPATBHAI GHEMABHAI DINDOR THRO JAYANTILAL GANPATBHAI
DINDOR

Versus

STATE OF GUJARAT

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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. 1,2,3

SERVED BY RPAD (R) for the Respondent(s) No. 4

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN****Date : 09/01/2024****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/Sr.No. 08/2023 dated 02.12.2023 (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.

(B) Your Lordships be pleased to stay the further operation, implementation and execution of the order of detention dated 02.12.2023 passed by the detaining authority and direct the respondent no.3 to forthwith release the petitioner from the jail pending the admission, hearing and final disposal of this petition;

(C) Your Lordships be pleased to dispense with the filing of an affidavit in support of this petition as the petitioner is in detention.

(D) Your Lordships be pleased to grant such other and further relief/s as are deemed fit, in the interest of justice.”

2. 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 was only a shop manager in the fair price shop which is managed by the Co-operative Society and therefore, the petitioner

cannot be held solely responsible for any activity that may have been alleged against the Co-operative Society running the fair price shop and held the petitioner to be black marketer.

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) G.L.H 697**.

3.3 Learned advocate further submitted that the show-cause notice issued to the Society was of 17.11.2023 and thereafter the reply on behalf of the Society was submitted on 22.11.2023, despite that an order of detention has been passed on 02.12.2023. 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 02.12.2023 passed by the District Magistrate of Panchmahals. The grounds of detention would indicate that on surprise inspection carried out on 12.11.2023, at the fair price shop which is being run by Adivasi Vikas Sahakari Grahak Bhandar Ltd. of Bilvadia where the inspection reveals deficit of certain grains like wheat, rice, tuver, oil and peas. According, to the order of detention the deficit of articles were sold in open market at open-market at higher price.

6.1 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. It is also reported that license has been vitiated therefore apprehension of the petitioner indulge in similar black marketing activity is not supported by any document.

6.2 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.

6.3 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. In that view of the matter, even on the ground of being enlarged on bail and continued to indulge in black marketing activity is not subjective satisfaction which would stand vitiated.

7. 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 suspension of licence to operate the fair price shop. 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.

8. In the result, the present petition is hereby allowed and the impugned order of detention dated **02.12.2023** 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.

9. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(RAJENDRA M. SAREEN,J)

Radhika