

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21223 of 2023****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

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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VICKYKUMAR S/O SHIVAJI KAVAJI KHARADI

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR. A.B.CHAUHAN, for O I PATHAN(7684) for the Petitioner(s) No. 1

MR. ROHAN RAVAL, AGP, for the Respondent(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2

GOVERNMENT PLEADER for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 19/03/2024

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 Lordships be pleased to issue writ, order or

directions of this Hon'ble High Court, quashing and setting aside the detention order dated 30/09/2023 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 released the petitioner forthwith."

1.1 Essentially, the challenge is to the order of detention dated 30.09.2023 passed by the District Magistrate, Sabarkantha, Himatnagar, respondent No.2 herein, by which the petitioner has been detained as a "bootlegger" based on two offenses registered against him.

2. Learned advocate for the petitioner has challenged the order of detention on three grounds. Firstly, learned advocate has submitted that the offenses relied upon by the detaining authority are separated by period of one year and two months and therefore, there is no live link between two offenses to treat the petitioner as continuously indulging in similar offense to be treated as bootlegger. Secondly, learned advocate has argued that though the petitioner has been enlarged on regular bail by the Court of competent jurisdiction, the detaining authority has not resorted to the lesser drastic remedy. Thirdly, it is argued that though the detaining authority has stated in the order of detention that the so called antisocial activities has resulted in damage to public health and consequently, breach of the public order however, there is no material on record to justify such conclusion.

3. Learned Assistant Government Pleader for the respondent State has objected to the grant of petition by submitting that over and above two offenses relied upon by the detaining authority against the petitioner, there are three more offenses of similar nature where the petitioner has been arraigned as an accused and

therefore, the detaining authority was justified to conclude that the petitioner is a listed as bootlegger and his antisocial activities were required to be curtailed.

4. Heard advocates for the parties and perused the documents placed on record. The contention raised by the petitioner regarding the snapping of the live link, it would be pertinent to refer to two offenses on which the detaining authority has relied upon. The details of which in tabular form are as under:-

Sr. No	Name of Police Station, CR No. and date	Sections	Date of Arrest
1	Himatnagar "A" Division Police Station C Part C.R.No.112090162305 62/23 16.07.2023	65AE, 81, 83, of the Prohibition Act and Sections 279 and 427 of the IPC	17.07.2023
2	Chithoda Police Station C Part C.R.No.112090572202 4/23 01.05.2022	65AE, 1116B, 81, and 98(2) of the Prohibition Act	30.05.2023

5. The perusal of the aforesaid chronology would indicate that the first offense is registered at Chithoda Police Station on 01.05.2022, whereas second offense registered at Himatnagar "A" Division Police Station is on 16.07.2023. Therefore, there is a gap of one year and two months between two offenses and therefore, the live link between two offenses is snapped. Therefore, the court may rely on the case of **Sushanta Kumar Banik Vs. State of Tripura**, reported in **AIR 2022 S.C. 4715**, the Apex Court has held as under;

"11. We are persuaded to allow this appeal on the following two grounds:

(i) Delay in passing the order of detention from the date

of proposal thereby snapping the "live and proximate link" between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.

(ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

DELAY IN PASSING THE ORDER OF DETENTION

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in **Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403**, wherein the following observation is made:

"Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing."

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

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20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal

from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."

6. The Court has taken into consideration the submission of learned advocate that there was no sufficient material on record to conclude that the so called antisocial activity of the petitioner has resulted in damage to public health and public order. The Court has perused the grounds of detention as well as the documents which are annexed alongwith the petition. The Court does not find any relevant document which would establish that the so called antisocial activity of selling of prohibited liquor and purchase of the same has resulted in any hazard in public at large and thereby conclusion drawn that the activity of the petitioner is damaging the public health is unfounded.

7. Lastly the Court has taken into consideration the fact that the documents supplied alongwith the grounds of detention particularly, on pages 42, 43, 47, 48, 92, 93 and 94 are hardly legible documents and therefore, the petitioner has not been supplied with the legible documents of the material relied upon by the detaining authority so as to enable the petitioner to make a representation which is a valuable right under Article 22(5) of the Constitution of India.

8. In view of above, the court is 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.

9. In the result, the present petition is hereby allowed and the impugned order of detention dated 30.09.2023 passed by the respondent-detaining authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case.

10. Rule is made absolute accordingly.

Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

SIDDHARTH