

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21266 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****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

RAMJIVAN S/O KUMBHARAM JANGU BISHNOI THROUGH KISHANA RAM
S/O KUMBHARAM JANGU BISHNOI
Versus
STATE OF GUJARAT & ORS.

Appearance:

JASPALSINH D JHALA(10131) for the Petitioner(s) No. 1
MR BHUNESH C RUPERA(3896) for the Petitioner(s) No. 1
MR ROHAN RAVAL, AGP for the Respondent(s) No. 1
GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 06/05/2024****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) xxx

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned order of detention dated 06-11-2023 No.DM /PASA /CASE /33/2023 at Annexure-A passed by the respondent No.2 herein and further, be pleased to issue a writ of Habeas Corpus, directing the respondents to release the detenu, Shri Ramjivan S/o Kumbharam Jangu Bishnoi from detention forthwith”

(C) & (D) xxx.”

2. Thus, essentially, the challenge is to the order of detention dated 06.11.2023 passed by the District Magistrate, Porbandar, respondent No.2 herein, by which the petitioner has been detained as a “bootlegger” based on solitary offence registered against him.

3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of the solitary offence under Sections of the Prohibition Act 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 detainee with breach of public order.

3.1 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 detainee 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.

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 detainee indicate that detainee 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.

5. Having heard learned advocates for the parties and considering the facts and circumstances of the case, it appears that the grounds of detention indicate registration of solitary FIR, the details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Miyani Marine Police Station	11218002230150 of 2023 dated 09.09.2023	65(A)(E), 116B, 81, 83 and 98(2) of the Prohibition Act	02.11.2023

6. The order of detention came to be passed on 06.11.2023. The State could have resorted to due process of law by filing cancellation of bail application and that would have been sufficient to prevent the petitioner from indulging in further offence, 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. 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 detainee 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 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 detainee cannot be said to be germane for the purpose of bringing the detainee 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.

8. The Court relies upon the observations made by this Court in a reported judgment in the case of **Sohanlal 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 detenus 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 detenus 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 Hon ble Supreme Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma V/s. State of Tamilnadu and others, reported in (2003)2 SCC 313."

9. 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

amongst general public or any section thereof.

10. Coordinate 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.”

11. 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.

12. In the result, the present petition is hereby allowed and

the impugned order of detention dated 06.11.2023 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. Rule is made absolute accordingly.

Direct service is permitted.

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

**Sd/-
(SAMIR J. DAVE,J)**

SHITOLE