

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 21030 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

**RATHVA MAHESHKUMAR RALIYABHAI****Versus****STATE OF GUJARAT & ORS.****Appearance:****ABHISST K THAKER(7010) for the Petitioner(s) No. 1****for the Respondent(s) No. 3****MR. ROHAN RAVAL, AGP, for the Respondent(s) No. 1****DS AFF.NOT FILED (R) for the Respondent(s) No. 4****RULE SERVED BY DS for the Respondent(s) No. 1,2****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 01/03/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

1. This petition is filed by the petitioner for following relief:-

“(A) YOUR LORDSHIPS be pleased to issue a writ of Habeas Corpus and/or a writ of order or direction of this Hon’ble Court in the nature of Habeas Corpus or any other appropriate writ, order or direction and be pleased to quash and set aside the order of detention dtd. 02.12.2023 passed by the respondent no.-2-District Magistrate, Panchmahals and further be pleased to direct the Jail Authorities i.e. respondent no.3 herein to release the petitioner forthwith.”

2. The challenge is to the order of detention dated 02.12.2023, where the petitioner has been detained under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short “PBM Act”). According to the order of detention, the petitioner had indulged in siphoning of the food grains meant for general public.

3. Learned advocate for the petitioner has argued that the case of the petitioner is that the petitioner was only a Manager in the Government godown at Taluka; Godhra, District: Panchmahal and the entire order of detention is based on the data which is showing certain discrepancies, but there is no evidence worth the name that the petitioner has resorted to selling of grains meant for public distribution system in open market for monetary gain.

3.1 Learned advocate submitted that though it is alleged that there is a violation of provisions of the Essential Commodities Act, but in fact, there is no FIR or complaint filed by the department against any breach including involving the petitioner nor the petitioner has been arrested in connection

with such complaint. Therefore, in absence of any evidence of black marketing and there being no antecedent against the petitioner, there is no reason for the detaining authority to believe that the petitioner will be indulged in similar activities because of which the preventive detention laws will have to be applied to the petitioner.

3.2 Lastly, learned advocate submitted that the petitioner has been issued with the show-cause notice under the prevention of Essential Commodities Act and petitioner has answered to such show-cause notice and thereafter, there is no other action against the petitioner and therefore, the detaining authority has not justified to preventively detain the petitioner.

3.3 The petitioner has thereafter relied upon the decision of this Court in case of **Vahidbhai Saiyadbhai Sheikh v/s. State of Gujarat and others**, reported in, **2003 SCC Online Guj 145**, particularly relying upon para-7.

3.4 Learned advocate has also relied upon the judgment dated 12.01.2024 rendered by this Court in Special Civil Application No.20946 of 2023, where also the Court has interfered with the order of detention passed under the similar set of circumstances.

4. Learned Assistant Government Pleader has objected to the grant of petition by submitting that the detention order has given cogent reasons on the basis of which, the detaining authority has arrived at subjective satisfaction that the petitioner is involved in unfair practice of siphoning of the

grains meant for public distribution under the door step delivery. It is submitted that the order of detention indicates that there is discrepancies in the stocks with the stocks present in the godown and mentioned in the register maintained statutorily. Learned Assistant Government Pleader has tried to justify the order of detention by referring to the grounds mentioned in the order of detention which contained the explanation offered by the petitioner against each of the discrepancies and therefore, when the explanation for the discrepancies was found lacking, the conclusion was arrived at that a case of preventive detention is made out.

4.1 It is further submitted that though the detaining authority had an option to proceed against the petitioner under Section 7 of the Essential Commodities Act, however, the detaining authority has felt that such proceeding will be time consuming and not only that, the petitioner will be successfully enlarged on bail by the Court of competent jurisdiction and therefore, the petitioner would continue with the activity for which the petitioner is required to be preventively detained.

5. In rejoinder, learned advocate for the petitioner submitted that the petitioner has not been supplied with all the necessary documents to make an effective representation to revoke the order of detention. It is submitted that even the documents supplied alongwith the grounds of detention are not legible documents, thereby precluding the petitioner from making a representation. Reference is made to several documents in the documents annexed with the grounds of

detention, particularly, page Nos.159, 161, 163, 165, 166 and 167 etc. The petitioner has still made a representation on 08.12.2023 to the District Magistrate as well as to the State Government however, such representation has not been decided.

6. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained under Section 8 of the PBM Act by an order dated 02.12.2023. The petitioner was at the relevant time a Godown Manager posted at Government godown of Taluaka: Kalol, District: Panchmahal.

6.1 The detaining authority has relied upon the inspection carried out on 23.10.2023 by the District Supply Officer of Panchmahal, Godhara of the Government godown at Kalol and during his visit and inspection, the discrepancies were found in the stocks of the food grains. In certain food grains mentioned in clause-1 of the grounds of detention, there is an excess of the food grains and articles and in one article namely 'Chana', there is deficit in the food grains. The other discrepancies observed is that two CCTV Cameras were non-functional, the labour register was not maintained, the cleanliness of the godown is not maintained, the police verification of the driver and cleaner of the vehicle is not maintained, there is no arrangement for light and camera in godown No.2, weigh bridge is not available etc. It appears that upon the inspection being carried out on 26.10.2023, a show-cause notice was issued to the petitioner and directed him to remain present on 02.11.2023. On that day, the petitioner had

appeared before the authority and in response to the show-cause notice has given a detailed reply.

7. After considering the reply given by the petitioner to the show-cause notice, it appears that the District Magistrate, who is also a detaining authority has come to the conclusion that the action/inaction on the part of the petitioner shows lack of commitment, negligence and carelessness and therefore, has committed the great irregularity.

8. The act of PBM Act provides for the detention in certain cases for the purpose of prevention of black marketing and maintenance of supplies of essential commodities to the community and therefore, in Section 3 when the power is given for detaining certain persons, such person who is empowered under Section 3 is required to be satisfied that only with a view to preventing any person from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community may order directing such person to be detained.

8.1 The explanation of the fresh phrase “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” would mean a person who is committed or instigating any other person to commit an offense, punishable under the Essential Commodities Act, particularly, related to control of the production, supply or distribution, or trade or commerce in any essential commodities with an object to make a gain in any manner directly or indirectly defeat the provisions of Essential

Commodities Act. The order of detention referred to the inspection carried out on 23.10.2023 and a show-cause notice issued on 26.10.2023 pointing out 13 discrepancies. These discrepancies have been explained by the petitioner in response to the show-cause notice and such show-cause notice was issued in consonance with the Essential Commodities Act.

8.2 It was for the show-cause notice issuing authority thereafter taken into consideration such explanation offered and come to a conclusion where there is a contravention of any of the provisions specially Section 3 of the Essential Commodities Act, such conclusion would entail the necessary penalties as prescribed in Section 7 of the Essential Commodities Act. The case papers do not indicate any proceedings in furtherance to the show-cause notice or any conclusion arrived at on the basis of the explanation given by the petitioner that there is a breach of Section 3 of the Essential Comm Act which would require imposing of penalties under Section 7 of the Essential Commodities Act.

8.3 In fact, the discrepancy as was noted on 23.10.2023 was required to be acted upon immediately, but in the present case, long time has lapsed where the show-cause notice was issued and response was given on 02.11.2023, yet the order of detention was passed after a period of one month on 02.12.2023. Where it is a question of preventing a person from indulging any activity, which is detrimental to supply of essential commodities, the detaining authority is required to act swiftly and delay, if any, would be fatal to the order of detention as it will not serve the purpose of preventing a

person from indulging into such activities. Not only that, the detaining authority has not taken into consideration the fact that the petitioner, who is serving as a godown Manager and in the Government service has been departmentally proceeded against and reportedly made ineffective in service and therefore, there is no question of petitioner in future indulging in any activity which would amount to contravention of Essential Commodities Act and therefore, the purpose of preventively detaining the person as is contemplated under the PBM Act is not served.

9. The Essential Commodities Act is a complete act in itself providing for step-wise action required to be taken against the erring person and therefore, only an appropriate officer has issued a show-cause notice calling for an explanation. After the explanation, it was incumbent under the provisions of law to initiate appropriate action which in the present case, has not been initiated. No complaint or FIR has been registered nor any other action is undertaken. This entire aspect is glossed over by the detaining authority by merely holding that the action contemplated under Section 7 of the Essential Commodities Act will take a long time. When the detaining authority has not acted immediately after the discrepancies were noted upon the inspection on 23.10.2023 and passed an order after period of two months, the subjective satisfaction arrived at by the detaining authority that the proceedings under Section 7 would take long time is hardly an explanation to overcome the delay. The detaining authority has not been filed any reply to explain the delay and therefore, in the opinion of the Court, the delay occurred in passing the order



of detention should be treated as fatal to the order of detention.

10. The Court in this regard, would refer to the decision of this Court in case of **Vahidbhai Saiyadbhai Sheikh (supra)**, wherein in para-7 it is held as under:-

“7. Adverting to the facts of this case, when the grounds served upon the detenu were scanned and the material which was produced before the detaining authority, there is no whisper of fact that a breach of provisions of Essential Commodities in the facts and circumstances of this case would cause reasonable apprehension to the extent of subjective satisfaction of the detaining authority that the detenu shall continue his activities and that the only compelling remedy was by way of preventive detention. The detaining authority has come to the conclusion that an alternative remedy by prosecution was thought for but in such a case the detenu was likely to be released on bail and was likely to continue his activity prejudicial to maintenance of supply of essential commodity. I could not find any material provided to the detenu or from the grounds that there was an iota of material before the detaining authority to come to subjective satisfaction that the detenu had such a repetitive tendency to indulge in the activity alleged against him. The record discloses that it is an allegation against the detenu that he was found in possession of blue kerosene as well as white kerosene and instruments like acid to convert blue kerosene in white kerosene, coupled with the statement of the detenu and a panchanama but it is nowhere recorded by the detaining authority that this incident ipso facto reveal the tendency on the part of the detenu that if he is not prevented by detention he was likely to indulge in such activity, in other words, what is revealed by the material on record, is, at the most commission of offence, be it under Essential Commodity Act, may be graver one, but from that record it never flows that the detenu was possessing such tendency of repeating this behavior in future.”

11. It has come on record that the petitioner has already been suspended and therefore, it cannot be said that the petitioner is likely to once again indulge in similar offense so as to preventively detained him.

12. If the conclusion drawn by the detaining authority after taking into consideration the explanation given by the petitioner to the show-cause notice, the detaining authority has concluded that the petitioner has demonstrated commitment, negligence and carelessness and therefore, committed great irregularity for the purpose of which the petitioner was required to be proceeded against departmentally or as per the provisions of Essential Commodities Act, instead the detaining authority has proceeded to pass the order of detention as if the petitioner is to be punished for the conclusion drawn by detaining authority, essence of prevention of black marketing is provided for and therefore, the Court is of the view that the detaining authority is substituted the punishment which is required to be inflicted after following due process of law by passing an order of detention and detaining the petitioner.

13. Article 22(5) of the Constitution of India is a valuable right available to a detainee post detention which it is incumbent upon the detaining authority to answer without any delay. In the instant case, it is contended that on 07.12.2023 (Annexure-C), a representation was made by the petitioner to the District Magistrate, Panchamaharaj (detaining authority) as well as the State Government, still such representation has not

been replied to either by the State or the detaining authority and there is nothing on record by way of the detaining authority that the representation was duly answered and was communicated to the petitioner. The detaining authority not having acted in consonance with Article 22(5), the detention has become vulnerable.

14. 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.

15. 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 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.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH