

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 18511 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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**SANJAY @ GACHADO SUNIL INDREKAR**

**Versus****STATE OF GUJARAT & ORS.****Appearance:****MR. KISHAN H DAIYA(6929) 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****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 18/03/2024****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 of Habeas Corpus or any other appropriate writ order or direction and be pleased to quash and set aside the order of detention dated 30/09/2023 passed by the detaining authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 as being illegal, invalid, null, and void arbitrary, suffers from total non-application of mind and violation of Art. 14, 21 and 22 of the constitution of India.”

1.1 Essentially, the challenge is to the order of detention dated 30.09.2023 passed by the Police Commissioner, Ahmedabad, 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 the ground that the order of detention has been passed on the very next day of the petitioner being released on regular bail and therefore, the detaining authority did not have sufficient time to arrive at the subjective satisfaction. Learned advocate has challenged the order also on the ground that though the detaining authority has referred to adversely affecting the public health however, alongwith the grounds of detention, there is no material to place substantiate the subjective satisfaction by the detaining authority. According to the petitioner, to arrive at conclusion that the sale of prohibited liquor by the petitioner has affected adversely the public health, then in that case, there is no report of a FSL or any other data in the form of statement or otherwise to indicate that how the consumption of liquor has adversely affected the public health and thereby disturbing the public order.

2.1 Learned advocate has submitted that the petitioner has relied upon the decision in case of ***Pesala Nookaraju v/s. Government of Andhra Pradesh and others*** reported in, ***(2023) 14 SCC 641***. Learned advocate has also argued that in each of the cases relied upon by the detaining authority, the petitioner has been enlarged on regular bail, particularly, attention is drawn to the offense registered at Naroda police station, where the petitioner was enlarged on regular bail on 29.09.2023 and the detention order is passed immediately on 30.09.2023.

3. Learned Assistant Government Pleader for the respondent State has objected to the grant of petition by submitting that as the petitioner has been arraigned as an accused in two offenses under the Prohibition Act, the detaining authority was justified in considering the petitioner as a bootlegger under Section 2(b) of the Act and therefore, passed an order of detention. He has drawn attention to the grounds of detention submitting that the earlier also, the petitioner has been detained under the PASA.

4. In rejoinder, learned advocate has submitted that though the detaining authority has made reference to the earlier order of detention, but the detaining authority has not placed anything on record in this regard, particularly the subsequent development, wherein it is indicated that the order of detention has been revoked by the competent authority.

5. Heard advocates for the parties and perused the documents placed on record. The petitioner has been detained as a bootlegger by an order dated 30.09.2023 passed by the Commissioner of Police, City Ahmedabad. While passing the

order of detention, in the grounds of detention, the detaining authority has relied upon two offenses, details of which in tabular form are as under:-

Sr. No	Name of Police Station, CR No. and date	Sections	Date of Arrest Date of bail
1	Sardarnagar Police Station, Prohi. C.R.No.11191040231 854/23 15.08.2023	66B, 65(A)(E), 116(1)B and 81 Prohibition Act	29.08.2023 21.09.2023
2	Naroda Police Station, Prohi. C.R.No.11191035231 469/202 27.08.2023	65(A)(E), 116B, 81 and 98(2) Prohibition Act	27.08.2023 29.09.2023

6. The Court has taken into consideration the submission of learned advocate indicating that the detention order has been passed on the ground that consumption of the prohibited liquor with which the petitioner has dealt has lead to adversely affecting the public health and therefore, there is a breach of order. However, there does not appear to be anything on record that the prohibited liquor in question has been sold in open market and the consumption of which has led to adversely affecting the public health nor there is any material in the form of FSL report to indicate the fact that the liquor so seized from the petitioner has the potential to harm the public health adversely. In absence of the material in aforesaid regard, the Court may rely upon the decision of the Apex Court in case of **Pesala Nookaraju (Supra)**, wherein the Apex Court has held as under:-

66. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself,

may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

67. It is relevant to note that the Explanation to Section 2(a) of the Act 1986 referred to above in para 11 incorporates a legal fiction as to the adverse effect on public order. In the case of **Harpreet Kaur (supra)**, the connotation of the Explanation was elucidated as under:-

*“28. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect on 'public order'. It provides that if any of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or a widespread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall-out of the activity of the "bootlegger" which determines whether 'public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act. (Emphasis supplied)”*

71. The learned counsel appearing for the appellant has also placed strong reliance on the decision of this Court in **Piyush Kantilal Mehta (supra)**. In that case, the allegations in the grounds of detention were that the detenu was a prohibition boot-legger; that he was indulging in the sale of foreign liquor and that he and his associates indulged in use of force and violence. In that case, the detenu was alleged to have been caught red-handed possessing bottles of English wine with foreign marks and on the second occasion, he was caught while transporting 296 bottles of foreign liquor in an Ambassador car. While dealing with that case, this Court observed as follows:-

*“It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do 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. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order.”*

7. The Court has taken into consideration the fact that the detaining authority has passed the order of detention on the very next day of the petitioner being enlarged on regular bail on 29.09.2023. In the opinion of the Court, the detaining authority has acted in hot haste and in mechanical manner as the sponsoring authority alongwith the grounds of detention has placed the proposal only after the petitioner being enlarged on regular bail, and immediately on the next day, the order of detention has been passed. In view of the Court that the subjective satisfaction by application of mind has not been

arrived at by the detaining authority.

8. The Court has taken into consideration the fact that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction as per the details indicated in the preceding paras in tabular form. Despite this, the detaining authority has proceeded to pass the order of detention without resorting to the lesser drastic remedy available or referring the same in the order of detention that the lesser drastic remedy is not effective to contain the so called antisocial activities of the detenue.

9. In the 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 detenue 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.”

10. 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.

11. 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.

12. Rule is made absolute accordingly.

**Direct service** is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

SIDDHARTH