

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18039 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

KARANSINH RAVSINH PARMAR THROUGH HASUMATIBEN KARANSINH PARMAR

Versus

THE STATE OF GUJARAT & ORS.

Appearance:

MR. BHARGAV K MEHTA(7094) 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 : 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) Allow this Special Civil Application by issuing an appropriate writ of Habeas Corpus or any other appropriate writ or direction quashing and setting aside the impugned order Kramank: DC/POL/PASA/DTN/SR No.11/2023 of detention at Annexure-‘A’ dt. 30/09/2023 passed by the respondent no.2.”

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

2. Learned advocate for the petitioner has challenged the order of detention primarily on the ground of delay. It is submitted that even after the petitioner was enlarged on regular bail on 12.07.2023, the order of detention is passed after delay of two months.

2.1 Learned advocate for the petitioner has also argued that the detaining authority in the grounds of detention has arrived at a subjective satisfaction that the sale of Indian made foreign liquor by the petitioner has resulted in addiction of the people as a result of which the public health has been affected. Learned advocate states that for such a subjective satisfaction, there is no material on record to arrive at a conclusion.

2.2 Learned advocate lastly submitted that though the petitioner was arrested in connection with the aforesaid three offenses, he was enlarged on regular bail by the Court of competent jurisdiction and thereafter, the detaining authority has not resorted to lesser drastic remedy of cancellation of bail before passing the order of detention.

3. Learned Assistant Government Pleader for the respondent State has objected to the grant of petition by submitting that the detaining authority is justified to arrive at subjective satisfaction of petitioner being a bootlegger on the ground that the detention order is based on three FIRs registered under the provisions of Prohibition Act. Over and above, there are four other offenses also again under the Prohibition Act which are registered against the petitioner and therefore, the petitioner is indulging in such kind of antisocial activities.

4. Heard advocates for the parties and perused the documents placed on record. The petitioner has been detained on the basis of three offenses of prohibition as a a bootlegger.

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

Sr. No	Name of Police Station, CR No. and date	Sections	Date of Arrest
1	Talod Police Station C Part C.R.No.112090492304 03/23 23.06.2023	65AE and 81 of the Prohibition Act	11.09.2023
2	Talod Police Station C Part C.R.No.112090492301 61/23 16.03.2023	65AE, 116B and 81 of the Prohibition Act	16.03.2023
3	Talod Police Station C Part C.R.No.112090492303 39/23 23.06.2023	65AE, 116B and 98(2) of the Prohibition Act	31.05.2023

5. The record would indicate that in each of three offenses, the petitioner has been enlarged on regular bail and lastly in connection with the offense being C.R.Nos.1120904923040/23,

registered with Talod Police Station, the petitioner was enlarged by the order of JMFC, Talod dated 12.07.2023. It is thereafter, the detaining authority has passed an order of detention dated 30.09.2023. According to this Court, the detention order is passed belatedly as there is no explanation for delay of approximately two months in the order/grounds of detention nor there is any affidavit filed by the detaining authority to explain the delay.

6. In view of the decision of the Apex Court in case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 S.C. 4715**, in the opinion of the Court the delay occurred in the facts of the present case is fatal to the order of detention. The Apex Court has observed 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."

7. The Court has also taken into consideration the subjective satisfaction arrived at by the detaining authority by concluding that the activity of the petitioner is detrimental to the public health and therefore, amounts to breach in public order. However, though the detaining authority has referred to possible adverse effect on the public health, there is no contemporaneous material or anything on record which could support the conclusion of detaining authority that the sale of liquor at the behest of the petitioner has resulted in

disturbance in any manner in the society or that the consumption of the liquor so sold by the petitioner has resulted in damage to the public health. In absence of any material on record, it was not open for the detaining authority to conclude and hence, the subjective satisfaction of the detaining authority is vitiated.

8. Lastly, the Court has taken into consideration the aspect of petitioner being enlarged on regular bail by the Court of appropriate jurisdiction and as the sponsoring authority i.e. Talod Police Station being aware of the previous offenses registered against him, has not resorted to the lesser drastic remedy like applying for cancellation of bail of the petitioner, the action on the part of the detaining authority would be against the decision of the Apex 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 detenu 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.”

9. 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.

10. 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 detenue is ordered to be set at liberty forthwith if not required in any other case.

11. Rule is made absolute accordingly.

Direct service is permitted.

(A.Y. KOGJE, J)

SIDDHARTH

(SAMIR J. DAVE,J)