

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19091 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

TRIBHOVANBHAI NANAJIBHAI PARMAR THROUGH MUKESH NANAJIBHAI PARMAR
Versus
DISTRICT MAGISTRATE

Appearance:

MS.MANJULA R CHAUHAN(6871) for the Petitioner(s) No. 1

MR PRANAV DHAGAT, AGP for the Respondent(s) No. 2

GOVERNMENT PLEADER for the Respondent(s) No. 3

RULE SERVED BY DS for the Respondent(s) No. 2

SERVED BY RPAD (R) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 17/01/2024****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) To issue appropriate writ and/or direction quashing and setting aside the order of detention,

order no.DM/1/PASA/CASE/66/2023 Passed by District Magistrate, Bhavnagar on 05/09/2023 at Annexure-A.”

2. Thus, essentially, the challenge is to the order of detention dated 05.09.2023 passed by the District Magistrate, Bhavnagar, respondent No.1 herein, by which the petitioner has been detained as a “bootlegger” based on solitary offence registered against him, the details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Velavadar Bhal Police Station, Bhavnagar	11198066230132 of 2023 dated 13.05.2023	65(A)(E), 116B, 81, 83 and 98(2), of the Prohibition Act	22.07.2023

3. Learned advocate for the detainee 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 the Prohibition Act by itself cannot bring the case of the detainee within the purview of definition under section 2(b) of the Act. Further, learned Advocate for the detainee 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 order of detention came to be passed on 05.09.2023. The State could have resorted to ordinary 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.

6. The order of detention states that the activity of the petitioner is danger to public health. However, the Court finds that there is no FLS report on record so as to establish factum of prohibited liquor affecting public health, thereby causing disturbance in public order.

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. Except general statements, there is no material on record which shows that the detainee is acting in such a manner, which is dangerous to the public order. The order of the detaining authority does not reflect application of mind to the aspect that cancellation of bail

can be an effective alternate to detention.

8. The State has chosen not to file counter affidavit/reply so as to disturb the action invoking provisions of the PASA Act. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged.

9. The Court also finds that there is a delay of approximately one and half months in passing the order of detention as the petitioner was enlarged on 22.07.2023 and the order of detention came to be passed on 05.09.2023. The Apex Court in the case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 S.C. 4715** 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."

10. 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 detainee 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 detainee 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 Honorable Supreme Court in the case of Panda Markup Dharma alias Hairband Markup Dharma Hardened Markup Dharma v. State of

Tamil and others, reported in (2003)2 CC 313.”

11. 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 among st general public or any section thereof or a grave or widespread danger to life, property or public health.

12. Separate 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.”

13. 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.

14. In the result, the present petition is hereby allowed and the impugned order of detention dated 05.09.2023 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. Rule is made absolute accordingly.

Direct service is permitted.

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

Sd/-
(SAMIR J. DAVE,J)

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