
(2010) 08 GUJ CK 0208

In the Gujarat High Court

Case No : Special Civil Application No. 8100 of 2010

Ashif Jusabhai Mthuputra

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2)

Citation : (2010) 08 GUJ CK 0208

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : A.R. Shaikh, for the Appellant; Maithili B. Mehta, Assistant Government Pleader for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—By filing present petition the petitioner - detenu under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order of detention dated 12.6.2010 passed by the respondent No. 2 - Police Commissioner, Rajkot, in exercise of power under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA Act"). The petitioner is branded as "bootlegger".

2. Heard the learned Advocate for the petitioner and learned AGP Ms. Maithili Mehta for the respondents. No Affidavit in reply is filed by the respondents controverting the averments made by the petitioner.

3. The petitioner came to be detained as "bootlegger" on his involvement in the offence being Prohibition case.

4. It has been submitted by the learned Counsel for the petitioner that it is a settled legal position that on registration of single solitary offence, no order of detention could have been passed as petitioner - detenu cannot be branded as "bootlegger". It has been further submitted that the activities of the petitioner

cannot be said to be injurious to the public health or public order. It has been further submitted by the learned Counsel for the petitioner that there is gross delay in passing the order of detention as well as there is gross delay in executing the order of detention.

5. I have gone through the grounds of detention and considered the arguments advanced by the learned Counsel for the petitioner as well as the learned A.G.P.

6. The Court is of the opinion that there is much substance in the arguments advanced by learned Counsel for the petitioner. It is seen from the grounds that a general statement has been made by the detaining authority that consuming liquor is injurious to health. In fact, a perusal of the order passed by the detaining authority shows that the grounds which are mentioned in the order are in reference to the situation of "law and order" and not "public order". Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind and the impugned order, therefore, deserves to be quashed and set aside.

7. Except the general statement, there is no material on record which shows that the petitioner - detenu is carrying out illegal activities of selling liquor which is harmful to the health of the public. In the case of *Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat* reported in 2001 (1) GLH 393 , having considered the decision of the Hon"ble Apex Court in the case of *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law and order" and not "public Order".

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order of detention dated 12.6.2010 passed by the Police Commissioner, Rajkot City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.