
(2012) 02 GUJ CK 0104

In the Gujarat High Court

Case No : Special Civil Application No. 329 of 2012

Dineshbhai @ Beriyopalsing Gurkha

APPELLANT

Vs

State of Gujarat and 2

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Citation : (2012) 02 GUJ CK 0104

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : N.R. Kodekar, for the Appellant; Krina Calla, AGP for Respondent(s) : 1, 3 and Rule Served by DS for Respondent(s) : 1-2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.D. Shah

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the Act of 1985') by the order dated 01.11.2011 passed by the Police Commissioner, Vadodara City, and he has been declared as bootlegger. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record.

2. From the grounds of detention, it appears that four offences being Sayajiganj Police Station III-C.R.No. 75 of 2011, 613 of 2011, 620 of 2011 and 627 of 2011 under the Prohibition Act have been registered against the detenu, wherein it is alleged that a total quantity of 173 ltrs. of country made liquor was found from the possession of the detenu. On the basis of registration of this case, the detaining authority held that the present detenu was carrying on activities of selling country made liquor which is harmful to the health of the public. It is held by the detaining authority that as the detenu is indulged in illegal activities, it is required to restrain the detenu from carrying on further illegal activities, i.e. selling liquor. The detaining authority has placed reliance on the above registered offence and statements of unnamed witnesses. In the opinion of this Court, the activities of

the detenue, by no stretch of imagination, can be said to be disturbing the "public order". 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 arrived at by the detaining authority is vitiated on account of non-application of mind and the impugned order, therefore, deserves to be quashed and set aside.

3. Except the statements of some anonymous witnesses, there is no material on record which shows that the detenu is carrying on activities of selling country-made liquor which is harmful to the health of the public. In the case of *Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat* [(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 passed on the basis of the statements of the witnesses fall under the maintenance of "law and order" and not "public order".

4. Applying the ratio of the above decisions, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding 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 "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, it cannot be sustained and, therefore, it deserves to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 01.11.2011 passed by the Police Commissioner, Vadodra City, passed against the detenu 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 is permitted.