

(2008) 10 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 8158 of 2008

Harshil alias Bittu Janakbhai Dave

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Bombay Prohibition Act, 1949 — Section 116, 65AE, 66B

Constitution of India, 1950 — Article 226

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

Citation : (2008) 10 GUJ CK 0067

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

Bench : Single Bench

Advocate : Subhadra G. Patel, for the Appellant; D.R. Chauhan, AGP, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Heard the learned advocate for the petitioner and the learned AGP for the respondents.

2. The brother of the petitioner-detinue has preferred this petition, under Article 226 of the Constitution of India, for appropriate writ, order or direction for quashing and setting aside the impugned order dated 7.3.2008 passed by the respondent No. 2-Commissioner of Police, Ahmedabad City, in exercise of power under Sub-section (2) of Section (3) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) whereby the detinue has been detained as a "bootlegger". In pursuance of the said impugned order, the detinue is detained in District Jail, Bhavnagar.

3. From the grounds of detention, it appears that only one offence being CR No. 5029 of 2008 under the provisions of Section 66B, 65AE and 116.1B under the Bombay Prohibition Act, was registered with Vejalpur Police Station, wherein a quantity of total 279 bottles of foreign liquor were found from the possession of the detinue. On the basis of registration of this case, the detaining authority

held that the present detainee was carrying on activities of selling liquor which is harmful to the health of the public. It is held by the detaining authority that as the detainee is indulged in illegal activities, it is required to restrain the detainee from carrying out further illegal activities, i.e. selling of liquor. The detaining authority has placed reliance on the above registered offences and statements of unnamed witnesses. In the opinion of this Court, the activities of the detainee can, by no stretch of imagination, be said to be disturbing the "public order." It is seen from the grounds that a general statement that 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.

4. Except the statements of some anonymous witnesses, there is no material on record which shows that the petitioner-detainee is carrying on 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* (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 falls under the maintenance of "law and order" and not "public order".

5. Applying the ratio of the above decisions, it is clear that before passing an order of detention of a detainee, 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 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, cannot be sustained and, therefore, it deserves to be quashed and set aside.

6. In the result, this Special Civil Application is allowed. The impugned order of detention dated 7.3.2008 passed by the 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. Rule is made absolute accordingly. Direct service is permitted.