

(2012) 03 GUJ CK 0074

In the Gujarat High Court

Case No : Special Civil Application No. 270 of 2012

Hasmukh Bavajibhai Babaria

APPELLANT

Vs

State of Gujarat and 3

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(2)

Citation : (2012) 03 GUJ CK 0074

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

Bench : Single Bench

Advocate : Ashish M. Dagli for Petitioner, for the Appellant; Krina Calla, Asst. Government Pleader for Respondent : 1 and 3 and Mrm. Iqbalashaikh for Respondent : 4, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.D. Shah

1. By way of this petition, the detenu has challenged the order of District Magistrate, Junagadh dated 03.11.2011 passed in exercise of powers u/s 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 ("P.B.M. Act" for short) detaining him. While assailing the above order, learned advocate for the petitioner emphatically relied on the main ground that the Central Government has not approved the order of detention passed by the detaining authority in stipulated period and the detaining Authority has mechanically exercised the powers conferred upon him under the Act. He has also contended that there was no material available with the Detaining Authority to indicate as to how the maintenance of supplies of fortified wheat and wheat Flour (fortified atta) was disturbed in any manner. Therefore, the order of detention is liable to be quashed and set aside. Reliance is placed upon the decision of Andhra Pradesh High Court in the case of B. Audi Lakshmi Vs.

Government of A.P. And ors., reported in AIR 1984 AP 282 wherein it was held that all the documents, together with copies of all the documents relied upon for passing the order of detention have to be furnished to the detenue, together with the order of detention. He further submitted that the set of documents does not show any date and it is shrouded with mystery as to whether the said requirement has been complied with. Reliance is placed on the decision of the Hon"ble Apex Court reported in Rajammal Vs. State of Tamil Nadu and Another, and it is submitted that the authority is duty bound to give a justifiable explanation when the matter involves breach of fundamental right of the citizens guaranteed under Article 21 and 22(5) of the Constitution of India and admittedly, the representation is not decided. Learned advocate for the petitioner submitted that the petitioner is behind bars for more than 2 months. It is also submitted that Union of India has not decided the representation within stipulated time. There is no explanation for delay caused in passing the order and also delay in deciding the representation. It is also submitted that prima facie, there is no reason to detain the petitioner in custody. Therefore, detenu is required to be released. Learned advocate for the petitioner has also relied upon order dated 24.01.2012 passed by this Court in Special Civil Application No. 17847 of 2011 in support of his submissions.

2. Learned advocate for the respondent No. 4 has opposed the contentions of the learned advocate for the detenu. He controverted all the allegations made by the learned advocate. He has filed affidavit on behalf of the Union of India opposing the petition.

3. Learned APP also opposed the petition of the petitioner.

4. Having regard to the facts and circumstances, submissions made by learned advocates for respective parties and considering the law laid down by the Hon"ble Apex Court as referred above, I deem it just and proper to quash and set aside the impugned order dated 03.11.2011 passed by the authority. The petition is allowed. The impugned order of detention dated 03.11.2011 passed by the District Magistrate, Junagadh 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.