

(2020) 06 GUJ CK 0037

In the Gujarat High Court

Case No : R/Special Civil Application No. 11568 Of 2019

Illyasbhai Ismailbhai Sheikh Through His Wife Faridabibi
Illyasbhai Sheikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(b)

Citation : (2020) 06 GUJ CK 0037

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : Shivani Rajpurohit, Divyangna Jhala

Final Decision : Allowed

Judgement

A.J.Desai, J

[1] This petition is directed against the order of detention dated 21.06.2019 passed by the respondent - Commissioner of Police, Surat in exercise of

powers conferred under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short the PASA Act) by detaining the

detenue as a bootlegger as defined under Section 2(b) of the Act. Along with the order of detention, the detenue is also served with the grounds

of detention. In the grounds of detention, there is a reference to one criminal case pending against the detenue. The case is registered under the

provisions of the Bombay Prohibition Act.

[2] As the learned advocate for the detenue was not getting connected through Video Conferencing, learned advocate for the detenue was called on

her mobile by the Court Master Shri Hemendra Barot and she has made her

submissions on mobile No.99258 11144.

[3] Learned advocate for the detainee submits that registration of FIR itself cannot lead to disturbance of even tempo of public life and therefore the public order. The order of detention is assailed by the detainee on various grounds mentioned in the memo of the petition. However, learned counsel for the detainee submits that, except FIR registered under the Bombay Prohibition Act, there was no other material before the detaining authority whereby it could be inferred reasonably that the detainee is a 'bootlegger' within the meaning of Section 2(b) of the Act and required to be detained as the detainee's activities are prejudicial to the maintenance of public health and public order. In support of the above submission, learned counsel for the detainee has placed reliance on judgment of the Apex Court in the case of Piyush Kantilal Mehta vs. Commissioner of police, AIR 1989 Supreme Court 491 and the recent judgment dated 28.3.2011 passed by the Division Bench of this Court [Coram: S.J. Mukhopadhaya C.J. & J.B. Pardiwala, JJ.] in Letters Patent Appeal No2732 of 2010 in Special Civil Application No.9492 of 2010 (Aartiben vs. Commissioner of Police) which would squarely help the detainee.

[4] Learned Assistant Government Pleader submitted that registration of FIR would go to show that the detainee had, in fact, indulged into such activities, which can be said to be disturbing the public health and public order and in view of sufficient material before the detaining authority to pass the order of detention, no interference is called for by this Court in exercise of its power under Article 226 of the Constitution of India.

[5] Having heard the rival submissions of the parties and perused the record of the case, I am of the view that FIR registered under the Bombay Prohibition Act alone cannot be said to be sufficient enough to arrive at subjective satisfaction to the effect that the activities, as alleged, are prejudicial to the public order or lead to disturbance of public order. There has to be nexus and link for such activities with disturbance of the public order. On careful perusal of the material available on record and the ratio laid down by the Apex Court in the case of Piyush Kantilal Mehta (supra) and the recent judgment dated 28.3.2011 passed by the Division Bench of this Court [Coram: S.J. Mukhopadhaya C.J. & J.B. Pardiwala, JJ.] in Letters Patent Appeal No2732 of 2010 in Special Civil Application No.9492 of

2010 (Aartiben vs. Commissioner of Police), I am of the view that the activities of the detainee cannot be said to be in any manner prejudicial to the public order and therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

[6] In the result, the petition is allowed. The impugned order of detention dated 21.06.2019 passed by the respondent Authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if he is not required to be detained in connection with any other case. Rule is made absolute accordingly.

Registry is directed to communicate this order to the concerned Jail Authority by fax / e-mail message forthwith.