
(2008) 10 GUJ CK 0065
In the Gujarat High Court
Case No : Special Civil Application No. 6080 of 2008

Jashiben	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 06-10-2008

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65E, 66B

Citation : (2008) 10 GUJ CK 0065

Hon'ble Judges : M.B. 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 Ms. Subhadra G. Patel for the petitioner and learned AGP Mr. D.R. Chauhan for the respondents.

2. By way of the the present petition, the petitioner-detenué has challenged the legality and validity of the order of detention dated 14.03.2008 passed by the Police Commissioner, Ahmedabad City, in exercise of powers under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

3. The petitioner-detenué is branded as a "bootlegger" within the meaning of Section 2(b) of the Act as he was found involved in offences under the Bombay Prohibition Act by engaging herself in the illegal sale and distribution of country liquor. While passing the order of detention the detaining authority has considered the fact of registration of six cases "CR No. 5044/2006 dt. 19.03.20006, CR No. 5077/2006 dt. 07.06.2006, CR No. 5045/2007 dt. 21.02.2007, CR No. 5151/2007 dt. 24.07.2007, CR No. 5221/2007 dt. 29.10.2007 and CR No. 5030/2008 dt. 24.02.2008 all for the offence punishable under Sections 66B and 65E of the Bombay Prohibition Act and the statement of the accused in the prohibition cases. The petitioner-detenué was found in

possession of total 53 litres of country liquor.

4. The learned Advocate for the petitioner-detenu has assailed the order under challenge on various grounds as mentioned in the memo of petition. However, this petition is capable of being disposed of on the sole ground as to whether there was cogent and credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

5. To reach to the subjective satisfaction that the bottlegging activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property etc. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

6. In the present case, the six pending criminal cases registered against the petitioner under the Prohibition Act and the activities of the petitioner of engaging himself in the illegal sale and distribution of country liquor can at the most be said to be involving law and order problem for which the petitioner can be adequately punished. It is therefore difficult for this Court to accept that the petitioner has been rightly detained as the activities of the petitioner can at the most be termed as affecting law and order. In short, no further discussion on the other points raised in this petition is required as in the opinion of this Court, the order of detention is not sustainable in the eye of law. In this context reference may be had to the decision rendered in the case of Harpreet Kaur v. State of Maharashtra reported in 1992 SC 797, wherein it has been held that involvement of the accused in fourteen offences including lifting of gas cylinders cannot be said to be prejudicial to the maintenance of public tranquility and the authority was not justified in arriving at the subjective satisfaction that the activities of the petitioner were likely to affect the maintenance of public tranquility.

7. In the result, the petition is allowed. The impugned order of detention dated 14.03.2008 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute. Direct service is permitted.