

(2008) 10 GUJ CK 0068

In the Gujarat High Court

Case No : Special Civil Application No. 7688 of 2008

Jaydevsinh Pradhumansinh Jadeja

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 06-10-2008

Acts Referred:

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

Citation : (2008) 10 GUJ CK 0068

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

Bench : Single Bench

Advocate : Pravin Gondaliya, for the Appellant; D.R. Chauhan, AGP, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Heard Mr. Pravin Gondaliya for the petitioner and learned AGP Mr. D.R. Chauhan for the respondents.

2. By way of the the present petition, the petitioner-detenu has challenged the legality and validity of the order of detention dated 17.03.2008 passed by the Police Commissioner, Rajkot 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-detenu 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 in the transportation and illegal sale and distribution of prohibited foreign liquor. While passing the order of detention the detaining authority has mainly considered the fact of registration of a single offence punishable under Sections 66B, 65AE and 116(B) of the Bombay Prohibition Act registered as CR No. 38/08 dt. 15.03.2008.

4. The learned Advocate for the petitioner-detenu has assailed the order under challenge on various grounds. However, this petition is capable of being disposed of on the sole ground as to whether there was credible material placed before the

detaining authority to come to the conclusion that by the activities of the petitioner, public order was disturbed or that public health was disturbed adversely.

5. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material that the activities of the petitioner directly or indirectly were causing or were likely to cause any 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 or the public health. While undertaking this exercise, the detaining authority must draw a clear line between the cases falling within breach of law and order and breach of public order.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of Darpan Kumar Sharma @ Dharban Kumar Sharma Vs. State of Tamil Nadu and Others, wherein while dealing with solitary instance of robbery as ground for preventive detention, the Apex Court observed that there is nothing on record to show that the reach and potentiality of the incident was so grave as to disturb the even tempo of life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Solitary instance of robbery was held not relevant for sustaining the order of detention and that such incident could hardly be said to disturb public peace or public order in jeopardy so as to bring the case within the purview of preventive detention.

7. In the present case, the detaining authority has taken into consideration the investigation papers in solitary case registered against the petitioner under the Bombay Prohibition Act. This case is registered against the petitioner as he was found in possession of 132 bottles of prohibited foreign liquor and that he was engaged in the business of storing and selling foreign liquor in breach of law for which the petitioner can be adequately punished if found guilty. Surely, the act constituting the offence cannot be said to have affected the even tempo of life of the community. 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 as the subjective satisfaction arrived at by the detaining authority not legal and valid. The order under challenge is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The impugned order of detention dated 17.03.2008 passed by the Police Commissioner, Rajkot 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.