
(1985) 10 GUJ CK 0010
In the Gujarat High Court

Jitubhai Jibhaibhai Solanki

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

Date of Decision : 14-10-1985

Acts Referred:

Constitution of India, 1950 — Article 22(5)

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

Citation : (1986) 2 GLR 995

Hon'ble Judges : S.B. Majmudar, J;R.J. Shah, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—In this application under Article 226 of the Constitution, the petitioner has sought appropriate writ, direction or order by way of habeas corpus or for any suitable writ, direction or order directing the concerned respondents to set at liberty the detenu who is detained under the provisions of the Gujarat Prevention of Anti-Social Activities Ordinance, 1985 ("The Ordinance" for short).

2. In order to appreciate the grievance made on behalf of the detenu in this connection, it will be necessary to have a look at the backdrop of the relevant facts pertaining to this application.

3. Relevant facts: Petitioner - Jitubhai Solanki who is resident of village Neja in Khambhat Taluka of Kaira district is preventively detained by the District Magistrate, Kaira by his order dated 2-8-85 passed in exercise of his powers u/s 3(2) of the Ordinance. The said order is at Annexure "A" to the petition. The order is in Gujarati. When translated into English, relevant recitals therein read as under:

The detaining authority is satisfied that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain him.

The grounds of detention supplied to the detenu are of even date. The grounds

are in Gujarati. The irrelevant recitals when translated into English read as under:

You Jitubhai Jibhaibhai Solanki, resident of Neja in Khambhat taluka are carrying on activity of distilling country liquor since long. Criminal cases being Khambhat Rural Police Station crime registers Nos. 72/81,128/81,47/82, 170/84 and 179/84 and case under Bombay Police Act have been registered against you.

2. Because of your activity of distilling and selling liquor, many obstacles arise in maintenance of public order in the said area. You are threatening those who are prepared to give evidence against you. On account of this reason, you are dangerous, mischievous and strong-headed person of that village.

3. Because of your activity of distilling and selling liquor, people residing in round about areas and specially la thes cannot move freely and suffer from sense of insecurity.

4. Because of your activity of distilling liquor and selling it, village people get tired. Witnesses are also afraid of giving evidence in public against you. You are threatening witnesses to inflict physical injuries on their person and you threaten them to suffer dire consequences.

Because of your aforesaid activity, you are creating an atmosphere of fear and terror in the locality and consequently, you are known as dangerous and nefarious person.

On account of the aforesaid facts, I am satisfied that with a view to preventing you from committing acts which are likely to disturb public peace and tranquillity, it is necessary to detain you.

4. Alongwith the grounds of detention, were supplied a bunch of documents alongwith index which according to the detaining authority were also considered by him for passing the impugned order of detention against the detenu. It is the aforesaid order of detention which has been brought in challenge by way of the present petition. This petition was admitted to final hearing by a Division Bench of this Court on 8-8-1985 and rule was made returnable on 9-9-1985. In response to the rule issued in this petition, District Magistrate, Kaira, the detaining authority has filed his affidavit-in-reply.

5. Legal contentions: It is now time for us to refer to the main contentions canvassed by the learned Counsel for the petitioner in this petition for challenging the impugned order.

6. It was vehemently contended that the grounds of detention supplied to the petitioner with a view to enabling the petitioner to file a representation as per Article 22(5) of the Constitution against the impugned order of detention are very vague and consequently, the petitioner was denied a reasonable opportunity of making his representation against the impugned order. Hence, the constitutional guarantee under Article 22(5) was violated. Accordingly, continued detention of the petitioner has become unauthorised and the detenu should be

set at liberty.

7. Having heard the learned Counsel for the petitioner as well as the learned Assistant Public Prosecutor who appeared for the respondents in this petition, we have come to the conclusion that this petition is required to be allowed on this point alone and consequently, we have not heard the learned Counsel for the petitioner on other points which also arise in this petition and which he wanted to rely upon as alternative contentions for challenging the impugned order.

8. So far as the aforesaid main contention canvassed by the learned advocate for the petitioner in this petition is concerned, it is necessary at the outset to look at the relevant statutory provisions.

9. Statutory provisions: The Ordinance in question was promulgated with a view to providing for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order. The Ordinance was promulgated on 27th May 1985 and was published in Gujarat Government Gazette on 6th June 1985. The Preamble to the Ordinance stated that whereas the public order is adversely affected every now and then by certain anti-social and dangerous activities of persons who are known as bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers, and whereas having regard to the resources and influence of the persons by whom, large scale on which, and the manner in which, the anti-social and dangerous activities are being clandestinely organized and carried on in violation of law by such bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers, the Governor of Gujarat was pleased to make and promulgate the aforesaid Ordinance in exercise of his powers conferred on him by Clause (1) of Article 213 of the Constitution. Section 2 of the Ordinance is definition section. Relevant definition for our purpose is definition of "bootleggers" as found in Clause (b) of Section 2. As per that clause, "bootlegger" means a person, who distills manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicles, vessels or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing. Section 3 of the Ordinance confers power on the concerned authority to make Order detaining certain persons. Sub-section (1) thereof reads as under:

(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

Sub-section (4) of Section 3 also is required to be extracted at this stage:

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which "affect adversely or are likely to affect adversely the maintenance of public order.

Explanation: For the purpose of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is 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 public health.

10. Aforesaid are the relevant statutory provisions of the Ordinance which have a direct impact on the decision of the question posed for our consideration in the present petition. A conjoint reading of wSub-sections (1) and (4) of Section 3 alongwith the explanation to Sub-section (4) points out that before any order of detention against any one can be passed under the Ordinance, the concerned authority must be satisfied that it is necessary to preventively detain such person with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. As per Sub-section (4), by a legal fiction, it has been provided that a person shall be deemed to be acting in any manner prejudicial to the maintenance of public order, if the following contingencies are satisfied. The concerned person must be engaged in or is making preparation for engaging in any activities-whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber as indicated in Sub-section (3), and activities of the concerned person must be such which may affect adversely or is likely to affect adversely the maintenance of public order. Thus, the detaining authority must be satisfied on the aforesaid two grounds before it can legitimately act u/s 3 of the Ordinance.

11. In view of the explanation to Sub-section (4) of Section 3, by way of deeming fiction, it has been provided that if any activity of such person viz. bootlegger, or dangerous person or drug offender or immoral traffic offender or property grabber is causing or is 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 public health, then such activity shall be deemed to have affected adversely the maintenance of public order. In view of the aforesaid statutory provisions, it is obvious that before the detaining authority gets subjectively satisfied about the need to preventively detain the concerned person under the provisions of the Ordinance, he must subjectively be satisfied with the following vital aspects; (i) proposed detenu must be either bootlegger, or dangerous person or drug offender or immoral traffic offender or property grabber; (ii) his activities must be such that they are causing or 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 the life, property or public health. Once the subjective satisfaction is reached on the aforesaid two vital aspects, power of preventive detention available u/s 3(1) would start clicking and would sustain the order of preventive detention passed against such person. If subjective satisfaction is found to have been based on the material which satisfies the aforesaid two requirements in view of explanation to Sub-section (4) of Section 3, the concerned nefarious activities of the proposed detenu will be deemed to have adversely affected the public order. It becomes, therefore, obvious that the grounds of detention served on the concerned detenu must meet the aforesaid two vital requirements. It is well settled by catena of decisions of the Supreme Court that subjective satisfaction when based on relevant material cannot be reassessed or gone behind by the Court and the Court cannot act as a Court of appeal. Adequacy of material pressed in service by the detaining authority against the concerned detenu for the purpose of detaining him preventively also cannot be gone into by the Court. The only short inquiry the Court can make true as to whether there is atleast some material before the detaining authority to get subjectively satisfied on the basic requirements of the statutory provisions. The statutory scheme of the Ordinance requires satisfaction of the detaining authority on two vital aspects as detailed above. If there is some material with the detaining authority which can be pressed in service by the detaining authority for meeting the statutory requirements, detention order would get immunised from the scrutiny of the Court. Equally, if it is found that there is no such material whatsoever on which subjective satisfaction can be based on the aforesaid two vital aspects, subjective satisfaction can be treated to have been based on non-existing data and would not remain genuine satisfaction and in that eventuality, the whole exercise will fall as it will go out of the statutory provisions of Section 3(1) and the action of the detaining authority would become totally ultra vires. We have, therefore, to consider the main grievance canvassed in this petition in the light of the aforesaid limited play available to the court vis-a-vis subjective satisfaction of the detaining authority supporting the impugned order.

12. Before we actually proceed to scan through the grounds of detention and the relevant material pressed in service by the detaining authority for passing the impugned order, it would be profitable to quickly glance through relevant decisions of the Supreme Court and this Court on the point.

13. Relevant decisions: In the case of Khudiram Das Vs. The State of West Bengal and Others, . The Supreme Court speaking through Bhagwati, J. (as he then was) had to consider, amongst others one contention canvassed on behalf of the detenu about infraction of Article 22(5) of the Constitution. In para 13 of the report are found the following pertinent observations:

Where the liberty of the subject is involved, it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously

observed and the subject is not deprived of his personal liberty otherwise than in accordance with law. Section 8(1) of the Act, which merely re-enacts that constitutional requirements of Article 22(5), insists that all basic facts and particulars which influenced the detaining authority in arriving at the making of the order of detention must be communicated to the detenu, so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, not only the right of the court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts or materials, apart from those admitted by it, which could have reasonably influenced that decision of the detaining authority and for that purpose, the court can certainly require the detaining authority to produce and make available to the court the entire record of the case which was before it. That is the least the court can do to ensure observance of the requirements of law by the detaining authority.

In this connection, it has also been observed in para 13:

This court has held that where grounds are furnished to the detenu those grounds must not be vague and must be such as to enable him to make a proper and effective representation against his detention.

14. In the light of the aforesaid decision of the Supreme Court, it must be held that the grounds of detention furnished to the detenu supporting the detention order should not be vague and if they are vague, constitutional right inhering in the detenu as per Article 22(5) would get infringed and would invalidate the order of detention. Another judgment of the Supreme Court, relevant on the point, is rendered in the case of Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, . Considering this very question, two learned Judges of the Supreme Court in the aforesaid case, Shinghal and Chinnappa Reddy, JJ. in their concurring judgments laid down the parameters of the scope and ambit of Article 22(5) of the Constitution. Shinghal, J. in para 8 of the report observed as under:

It is obvious therefore that the above grounds of detention are vague. This court has disapproved of vagueness in the grounds of detention because that impinges on the fundamental right of the detenu under Article 22(5) of the Constitution to make a representation against the order of detention when the grounds on which the order has been made are communicated to him. The purpose of the requirement is to afford him the earliest opportunity of seeking redress against the order of detention. But as is obvious, that opportunity cannot be said to be afforded when it is established that a ground of detention is so vague that he cannot possibly make an effective representation. Reference in this connection

may be made to this Court's decision in *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, where the guarantee of Article 22(5) has been characterised as an elementary right of a citizen in a free democratic State, and it has been held that if a ground of detention is not sufficient to enable the detained person to make a representation at the earliest opportunity, it must be held that his fundamental right in that respect has been infringed inasmuch as the material conveyed to him does not enable him to make the representation. So as the aforesaid grounds of detention are vague, the petitioner is entitled to an order of release for that reason alone. It is true that, as has been held in *Naresh Chandra Ganguli's case (supra)*, "vagueness" is a relative term, and varies according to the circumstances of each case, but if the statement of facts contains any ground of detention which is such that it is not possible for the detenu to clearly understand what exactly is the allegation against him, and he is thereby prevented from making an effective representation, it does not require much argument to hold that one such vague ground is sufficient to justify the contention that his fundamental right under Clause (5) of Article 22 of the Constitution has been violated and the order of detention is bad for that reason alone. Reference in this connection may also be made to the decisions in *Tarapada De and Others Vs. The State of West Bengal*, ; *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, ; *Shibban Lal Saksena Vs. The State of Utter Pradesh and Others*, ; *Rameshwar Lal Patwari Vs. State of Bihar*, ; *Motilal Jain Vs. State of Bihar and Others*, and *Pushkar Mukherjee and Others Vs. The State of West Bengal*, .

15. Chinnappa Reddy, J. in his concurring judgment made the following pertinent observations in para 17 of the report:

We are primarily concerned in this case with Article 22(5) which is as follows:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be communicate to such person the grounds on which the order has been made and shall accord him the earliest opportunity of making a representation against the order."

The extent and the content of Article 22 (5) have been the subject matter of repeated pronouncements by this Court (vide *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, , *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, , *Shibban Lal Saksena Vs. The State of Utter Pradesh and Others*, , *Dwarkadas Bhatia v. State of Jammu and Kashmir 1956 SCR 948*). The interpretation of Article 22(5) consistently adopted by this Court is perhaps, one of the outstanding contributions of the court in the cause of Human Rights. The law is now well settled that a detenu has two rights under Article 22(5) of the Constitution; (1) To be informed as soon as may be, of the grounds on which the order of detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is, to

be furnished with sufficient particulars to enable him to make representation which on being considered may obtain relief to him. The inclusion of an irrelevant or non-existent ground among other relevant grounds is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the court for relief. The reason for saying that the inclusion of even a single irrelevant or obscure ground among several relevant and clear grounds is an invasion of the detenu's constitutional right is that the court is precluded from adjudicating upon the sufficiency of the grounds and cannot substitute its objective decision for the subjective satisfaction of the detaining authority.

16. We may now turn to two decisions of this Court which have been rendered in the context of Article 22(5) of the Constitution and in the light of the grounds furnished to the concerned detenu which in the view of the court were very vague grounds and which could not sustain valid detention order. In Special Criminal Application No. 33 of 1977, a Division Bench of this Court consisting of M.P. Thakkar and P.D. Desai, JJ. (as they then were) by a decision dated 13-4-1977 struck down the detention order of the concerned detenu who was sought to be preventively detained by the Commissioner of Police Ahmedabad in exercise of his power under Sub-section (2) of Section 3 read with Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 2 of the Maintenance of Internal Security Act, 1971. The grounds furnished to the detenu in support of the detention order made a general allegation against the detenu to the effect that he himself and his hired persons were selling or causing to be sold intoxicating alcoholic drink in a stealthy manner in Good-luck society near Dakshini Society. The people were made to consume the drink so sold to them. This alcoholic drink was dangerously harmful to human health, and many times it also endangered life. As a result of consumption of such drink recently, more than hundred persons had died in Ahmedabad City and the conditions of other hundred persons who were under medical treatment was serious. On account of such illegal activity on his part, headstrong persons and persons of bad character collected together at the abovementioned place and drink intoxicating drink and created hullaballo frequently. They also uttered foul abuses and they outraged the modesty of women and many times they indulged in quarrelling and scuffling. And in the course of such incidents, they used knife, pen-knife and batten and as a result thereof, people ran helter-skelter and an atmosphere of fear and harassment was created and, consequently, the daily life of the residents of the aforesaid locality and their day to day activities got disturbed for some time. Besides, he either himself or through his men threatened with life the residents of the aforesaid locality in case they gave information about his illegal activities to the police or he suspected that they had done so. No one was, therefore, prepared to give evidence in public against him (the detenu). One of the contentions canvassed before this Court was that the grounds of detention

furnished to the detenu were very vague and, therefore, the detenu's constitutional right under Article 22(5) of the Constitution was violated. Accepting this contention, P.D. Desai, J. (as he then was) speaking for the Division Bench made the following observations at page 7 of the judgment:

In the present case, we find that in the first part of the ground, the detaining authority has referred to the illegal activity allegedly carried on by the petitioner. The allegation, in substance, is that the petitioner himself or through his hirelings was secretly organizing in the named locality sale and consumption of intoxicating alcoholic drinks which were harmful to human health. No particulars regarding the dates and time and precise places where such activity was carried on are given. No particular instances are cited. Having referred to such illegal activity of the petitioner in such general terms, the ground proceeds to state about the collection of head-strong persons of bad character and creation of hullaballo by them and the incidents of utterance of foul abuses, outraging of modesty of women and quarrelling and scuffling and the use of dangerous weapons in the course of such scuffles and quarrels. No particulars are furnished as to what date and time such incidents, if any, occurred and at which place precisely. Although the allegation is that such incidents used to occur from time to time, no instances have been cited. Names of the persons, who were involved in such incidents either as perpetrators of atrocities or victims thereof, are not mentioned. It is inconceivable that if such things used to happen often as alleged, no complaint would have been made to the police. It would not, therefore, have been impossible to mention those particulars. It is then stated that the day to day life of the people in the locality is disturbed on account of such incidents. But even there no particulars are furnished. The allegation further is that the petitioner and his hirelings threatened to take away the life of persons who came forward to give information about such illegal activity or who were suspected to have given such information. This part of the ground is also equally vague, instances are cited. Not even one particular incident of such nature is illustrated. It appears to us that the ground in its entirety is so vague and general that it does not enable the petitioner to legitimately meet the charge levelled against him and to make an effective representation in compliance with his constitutional right, in fact, if these were the only materials with the detaining authority, it is difficult to appreciate as to how such authority could have been reasonably satisfied about the need of detention of the petitioner on the ground alleged.

17. The Division Bench referred to series of judgments of the Supreme Court and other High Courts on the point and concluded that the grounds furnished to the detenu in the case before them were vague and the conclusion was inevitable that they denied to the petitioner effective right of representation and consequently, the said infirmity invalidated the order of detention itself. The next unreported judgment is by another Division Bench of this Court consisting of N.H. Bhatt and I.C. Bhatt, JJ. in Special Criminal Application No. 400 of 1985 decided on 1-6-1985. In that case, this Court was concerned with the detention

order under the very Ordinance with which we are concerned in the present case. The main allegations as found in the grounds of detention against the concerned petitioner-detenu pertained to his direct or indirect involvement in the offences relating to prohibition. One of the grounds of detention viz. ground No. 8 was to the effect that the petitioner was known to be quarrelling with rickshaw drivers refusing to accompany him in transportation of liquor and his being a leader in various acts of arson during the earlier communal riots in the city of Bharuch. This ground did not specifically point out a single incident and no FIR of such incident was even produced. This ground was treated to be absolutely vague by the Division Bench, placing reliance on the decision in *Mohmed Yusuf's case* (supra), this Court held that ground No. 8 as aforesaid being totally vague, had vitiated the detention order, amongst others.

18. In the light of the aforesaid settled legal position, we have to see as to whether there was any material with the detaining authority on the basis of which it could reasonably and rationally base its subjective satisfaction for concluding that the petitioner was liable to be preventively detained u/s 3(1) of the Ordinance. To recapitulate, the detaining authority before passing any valid order of detention u/s 3(1) of the Ordinance, has to be subjectively satisfied on two vital requirements envisaged by the statutory scheme of Section 3 of the Ordinance. In para 6 (h) of the petition, it is contended that grounds are either vague or imprecise or interminate and they do not contain full facts so as to enable the detenu to understand what is alleged against him. In reply, at para 29, it is argued that grounds are sufficient to detain the petitioner. It becomes therefore necessary to look at the grounds.

19. Grounds of detention: We have already extracted earlier the English rendering of the grounds of detention. So far as ground No. 1 is concerned, it merely refers to the petitioner's activity in connection with illicit distillation and sale of country liquor and his involvement in a number of criminal cases as listed in that ground. This material obviously brings the petitioner's case within the four corners of the definition of bootlegger as indicated by Section 2(b) of the Ordinance. Thus, the first statutory requirement of valid detention order u/s 3(1) viz. that the concerned person must be bootlegger, or dangerous person or drug offender or immoral traffic offender or property grabber, as referred to in Sub-section (4) of Section 3, has been met in the present case. In fact, the learned Counsel for the petitioner conceded that because of the involvement of the petitioner in such type of activities of distillation and sale of illicit liquor, he can be considered to be a bootlegger and he does not really quarrel on this aspect. However, the important question which survives is whether his alleged indicated activity is of such a nature which is or which is likely to affect adversely the public order and whether deeming provision of explanation to Section 3(4) gets attracted in the present case or not. So far as this aspect of the case is concerned grounds Nos. 2, 3 and 4 become relevant. A mere look at the grounds shows that they are absolutely general and vague in nature. No indication whatsoever is gathered from them as to where and at what time and in

connection with whom the petitioner can be alleged to have resorted to so-called nefarious activities as listed in these remaining grounds. These grounds must, therefore, obviously be treated to be totally vague insofar as they seek to rope in the petitioner with the alleged disturbance of public order as contemplated by the statutory scheme of the Ordinance. They would therefore, fail on the touchstone of Article 22(5) of the Constitution, in the light of the aforesaid settled legal position. It would be lost for the petitioner to effectively represent against the impugned order of detention and to meet the aforesaid grounds which are totally vague in nature. However, our attention was invited by the learned Counsel for the respondents to the list of documents furnished to the detenu alongwith the grounds of detention which would naturally form part and parcel of the grounds of detention. The effort of the learned Counsel for the respondents, to point out that this bunch of documents atleast furnished relevant data for the detaining authority to come to its subjective satisfaction about the need to detain the detenu under the provisions of Section 3(1) of the Ordinance. He also cautioned us that if there was some material available from this bunch of documents given to the detenu alongwith the grounds of detention on the basis of which genuine satisfaction of the detaining authority could be rested, this Court cannot go behind such satisfaction. There cannot be any dispute on this settled legal position.

20. However, it will always be open to scrutinise this material with a view to finding out as to whether there was any the least material of the type which can sustain subjective satisfaction of the detaining authority on the second statutory requirement viz. whether the activity of the petitioner as a bootlegger was such as was likely to endanger public order, subject of course to the deeming provision of Sub-section (4) of Section 3. Only from that limited view point, we scanned through the entire bunch of papers furnished to the detenu alongwith the grounds of detention. The compilation of documents furnished to the detenu and which was made available for our scrutiny ran into 38 pages. At pages 1 to 5 were found statements recorded by the circle police inspector, Khambhat from certain residents of the locality whose names were not made public and were not communicated to the detenu. So these are statements of anonymous persons who were residing in the locality and who had something to say about the nefarious activities of the detenu. All these statements were recorded on the very same day i.e. 9-6-1985. These statements have generally stated that the petitioner was a headstrong and dangerous person. Nobody was permitted to give evidence against him. That because of his above activities of selling liquor, many outside people used to collect for drinking liquor and after having taken liquor, they used to get drunk and were speaking abusive language which created atmosphere of terror and harassment to the residents of the locality and women-folk. Not a single statement even remotely indicated as on what particular day or particular place, such disturbance of public order took place. The allegations absolutely remained general in nature and they more or less indicated general bad reputation of the detenu and nothing more. Even none of the statements

indicated that anything had happened as alleged in the presence of maker of the statement or that he had seen any such incident with his own eyes. These statements remained statements of persons who had something to say about the general bad reputation of the detenu and were based more or less on rumour of public opinion or hear-say. But even that apart, there was no indication whatsoever about any specific details or particulars regarding any of the activities of the detenu which can be said to be directly or indirectly causing or 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 public health as contemplated by Sub-section (4) of Section 3 of the Ordinance. At page 6 of the compilation, is found statement of P.S.I. Cambay Mr. Bimal Motilal Rajvanshi. All that the statement says is that he knew the detenu and that detenu is a bootlegger who is engaged in illegal activity of selling liquor, that he was a headstrong person and at the time of raid, he used to escape and could not be apprehended and nobody came forward because of his fear to give evidence against him. Details of prohibition cases filed against the detenu were furnished in the compilation at pages 7 and 8. At page 9 is found another statement of head-constable Magansingh Mansing. It states that detenu is also involved in the offence of murder of one Paroi gentleman but he was acquitted because of lack of evidence. Similar statement is given by head-constable Ambalal Ashabhai which is at page 11 of the compilation. He has produced copies of F.I.R. in prohibition cases lodged against the petitioner and also details regarding identification of the petitioner as mentioned in the registers maintained by Cambay Police Station. They are found at pages 13 to 38 of the compilation. This is the total material which was made available to the detaining authority for its subjective satisfaction about need to preventively detain the petitioner.

21. The learned Counsel for the respondents frankly stated that save and except this material, there was no other material available to the detaining authority and the aforesaid material is the only material on the basis of which the impugned order has been passed. It is patently clear that save and except general allegations about bad reputation of the detenu, there was nothing available on record before the detaining authority on the basis of which he could have been satisfied, of course subjectively, for the need to preventively detain the petitioner-detenu. The material relied upon by him was so general and vague in nature that it made it impossible for the detenu to make effective representation against the detention order on the basis of the same and to point out how his alleged activities were not likely to prejudice maintenance of public order, which is contemplated by Section 3(1) read with Section 3(4) and the explanation. The entire material which was relied upon by the detaining authority must, therefore, be treated to be totally vague so far as the aforesaid second requirement of the statutory scheme is concerned. As we have already discussed earlier, before any one can be legally detained in exercise of the power u/s 3(1) of the Ordinance, he must not only be a bootlegger as contemplated by Sub-section (4) of Section 3 but his activity must appear to be such as is likely to

adversely affect maintenance of public order. On this second aspect, the subjective satisfaction of the detaining authority on the facts of this case must be said to have been based on no legally permissible material whatsoever. This is not a case of adequacy of material. This is a case of total absence of material which can legitimately go in for supporting exercise of subjective satisfaction which the detaining authority has to undertake before passing legal and valid detention order. It must, therefore, be said that on the material supplied to the detenu by way of grounds and supporting documents in connection with the impugned detention order, the detenu cannot be said to have been given a reasonable opportunity for making his representation as enjoined by Article 22(5) of the Constitution. The detention order must be treated to have been based in violation of the aforesaid statutory guarantee. Consequently the detention order must fail only on this ground.

22. In the result, this petition succeeds. Rule issued therein is made absolute. The impugned order of detention at annexure "A" is quashed and set aside by issuance of a writ of mandamus. Respondents are directed by a writ of habeas corpus to set at liberty the detenu forthwith, if not otherwise required to be detained pursuant to any other order.