

**(2014) 08 GUJ CK 0108**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 7249 of 2014**

Kalwantsingh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

**Date of Decision : 14-08-2014**

**Acts Referred:**

Bombay Prohibition Act, 1949 — Section 116(2), 67, 81, 88, 89 — Constitution of India, 1950 - Article 14, 22(5) — Gujarat Prevention of Anti-social Activities Act, 1985 - Section 2(b), 3, 3(1)

**Citation : (2015) 2 GLR 1097**

**Hon'ble Judges : S.G. Shah, J.**

**Bench : Single Bench**

**Advocate : H.B. Champavat, for the Appellant; Amita Shah, A.G.P., for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

S.G. Shah, J. Heard learned Advocate Mr. H.B. Champavat for the petitioner and learned A.G.P. Ms. Amita shah for the respondent-State at length. Petition is filed by the uncle of the detenu-Kalwantsingh Satnamsingh Rajput, who is shown as a petitioner, since he is detained by the impugned order dated 15-3-2014 by respondent No. 2 under Sec. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985.

2. In such impugned order of detention, competent authority has considered the solitary offence under Secs. 66(B), 65AE, 67, 116(2), 81, 88 and 89 of the Prohibition Act registered with Palanpur Taluka Police Station being II-C.R. No. 501 of 2014 on 25-2-2014. On perusal of such F.I.R., it becomes clear that concerned team of Palanpur Taluka Police station on their routine patrolling to avoid such type of offences came to know that one Truck No. RJ-19-1-G-2118 is transporting foreign liquor without permit to Ahmedabad, and therefore, they have cordoned the concerned entry points and also road near Jagnath Bus Station where they found such truck coming on road. It is further stated that

when they have asked the truck to stop, instead of stopping the truck, driver has driven it towards Chhapi in speed so as to avoid its checking, therefore, police had chased the truck for half km. and intercepted it. Thereby truck has to stop there and on inquiry, petitioner was found driving and controlling the truck. Thereafter, when truck was examined in the presence of the petitioner, in front there were bags of rice and on removing such front bags, they found cartons of foreign liquor and on demand driver could not produce a permit or documents for such foreign liquor, and therefore, the same was recovered as muddamal article and on counting of such bags and cartons there were only 65 bags of rice worth Rs. 1,625/-, whereas there were 230 cartons of liquor and on verification, it has been found that each carton contains 148 bottles liquor of rock strong by Mali & Green Co., with label that it is for the sale in Punjab. Total value of such liquor is approximately Rs. 12,96,000/-. On further inquiry, petitioner has disclosed that liquor is to be delivered at Ahmedabad. In addition to rice bags and cartons of liquor, truck and mobile phone of petitioner were recovered as muddamal and while petitioner is found with huge quantity of liquor worth Rs. 13,00,000/-, considering the provisions of Act, impugned order was passed. On verification of papers provided to the petitioner with order, it becomes clear that investigation confirms the version of the complainant. However, learned trial Court has released the petitioner on bail by an order dated 7-3-2014 observing that petitioner is resident of Punjab and he was only driving the vehicle and when offence is not grave in nature so as to life imprisonment or more and when petitioner has pleaded that he will obey all the conditions and that he has responsibility of his family, the Sessions Court has deemed it fit to release him on bail though it was submitted by the prosecution that applicant is transferring huge quantity of liquor from Punjab to Ahmedabad and if he is released, he will certainly continue such activity. It is also relevant to note that the investigating agency could not find out the person whose name was disclosed by the petitioner from the mobile number given by the petitioner. Therefore, in fact, there is a reason to believe that petitioner is himself is a key person and owner of the liquor to be delivered at Ahmedabad.

If we peruse the impugned order of detention, it becomes clear that competent authority has detained the petitioner as a bootlegger after arriving at subjective satisfaction considering that when huge quantity of liquor which is otherwise to be sold in Punjab was brought to the State of Gujarat where it is prohibited. The competent authority has explained the details that how and why the activities of the petitioner should be considered as bootlegger and how it is disturbing the public order.

3. It is certain that though the crime is not a heinous crime it cannot be said that it does not affect the public order. Inasmuch as such huge quantity is transferred, though prohibited, just before couple of weeks of election, it is certainly transferred with a motive to disturb public life in the State. Though statement of the accused cannot be relied upon in criminal trial, it cannot be ignored that in his statement before the investigating agency, petitioner has to

admit that in fact he himself is owner of the truck and when police could not find the owner of the liquor from the mobile number disclosed by me petitioner himself, petitioner has to further admit that he has given a wrong number to the police so as to save his skin, and thereafter, he has disclosed another number. For such trip he is getting Rs. 80,000/- per trip. It can also not be ignored that when police has asked him to stop, he has instead of stopping the truck, driven it speedily so as to run away from the place and fortunately he was caught within 15 minutes, otherwise he shall commit some other offence like vehicular accident. Thus, prima facie it is confirmed on record that petitioner is doing business of transfer and supply of prohibited liquor in the State.

4. With above background, if we consider the provision of the Act in question, the word "bootlegger" is defined under Sec. 2(b) of the Act, which reads as under :

"Sec. 2(b) "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 receptacles or any other material 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."

5. Perusal of the definition, makes it clear that there is no compulsion to wait for repeated offence to consider someone as bootlegger and that all the activities viz. distilling, manufacturing, storing, transporting, importing, exporting, selling or distributing is prohibiting of any provisions of Bombay Prohibition Rules and act or orders made thereunder would be enough to term any person who involve in any such activity either directly or support it or get it done by any other person or abets it in any manner. Thereby there is no second thought or there is no escape for the petitioner that he could certainly be termed as "bootlegger". It is clear and obvious from the definition of word "bootlegger" that word "habitually" is absent from the definition clause of "bootlegger". Thereby the only issue remains with reference to the propriety of passing the detention order, which is otherwise termed as drastic measure. The power to make orders detaining persons is enumerated in Sec. 3 of the Act which provides that the State Government if satisfied with respect to any person with a view to prevent him in acting any manner prejudicial to the maintenance of public order and when it is necessary to do so, the Government may pass an order directing such person to be detained. Sub-section (4) of Sec. 3 of the Act provides that for the purpose of this Sections a persons shall be deemed to be "acting in any manner prejudicial to the maintenance of public order". When such person is engaged or making preparation of engaging in any of the activities whether as a bootlegger or common gambling house keeper or and person 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. Thereby the relevant provision which is material for present is deeming provisions under sub-sec. (4) of Sec. 3 of the Act which confirms that even if such activity affect adversely or likely to affect adversely or shall be deemed likely to affect the public order, men person shall be deemed to have acted in a manner prejudicial to the maintenance of public order. Whereas expression of such sub-sections makes it further clear that for the purpose of this sub-sections, the public order, however, deemed to be affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities or any person referred to in this sub-sections directly or indirectly, is causing or is likely to cause any harm, danger or alarm of feeling of insecurity among the general public or any Sections thereof or a grave or widespread danger to life, property or public health.

5.1. Therefore, in fact there are two deeming provisions where presumption can be had against the person who has involved himself in any of such illegal activities for which he could be detained.

5.2. Therefore, considering the above factual details and provisions of law, it becomes clear that petitioner can certainly be considered as a bootlegger when he is transferring and supplying the huge quantity of liquor in the city, though mere is a prohibition on liquor which certainly results into disturbance in public life. Therefore, when there is a prima facie evidence and observations against the petitioner, I do not see any reason to interfere in the order of detention which is otherwise result of the subjective satisfaction of the competent authority and more particularly when petitioner is unable to show that why such subjective satisfaction can be treated as illegal, erroneous, arbitrary or otherwise.

6. It is known fact that if such huge quantity of liquor would be sold in the city and in that case if it is for consumption by citizens of the city, then such activity cannot be considered as a simple act of breach of law, but it can be certainly treated as disturbance of public order. If we peruse the impugned order the detaining authority has disclosed all the material against the petitioner so as to be detained as a bootlegger as per Sec. 2(b) of the Act. Considering the factual position and law as above, when petitioner was transporting huge quantity of liquor in the city there is not only law and order problem, but it would result into disturbance of public order.

7. It is not disputed that the Act is not held ultra vires by the competent Court and that the Act allows the competent authority to pass impugned order based upon their subjective satisfaction. Terminology of subjective satisfaction is wide enough and gives ample jurisdiction and power to the competent authority to pass appropriate order in appropriate case. It is settled legal position that in absence of specific clarity that subjective satisfaction is otherwise unjust, illegal, arbitrary or perverse, the Courts should not enter into the scrutiny of the reason for subjective satisfaction and thereby the Court should not try to over administer the power and jurisdiction of the competent authority, though it is true that the Court can interfere and thereby quash and set aside such an order

if it is passed without proper application of mind and in absence of evidence and material which are otherwise necessary for passing such order. In my opinion, it cannot be said that the competent authority has passed such an order arbitrarily or that such order is not in accordance with the law or perverse. So far as the justification for subjective satisfaction is concerned, as stated earlier, it is settled legal position that the reasons for justification regarding subjective satisfaction are not subject to scrutiny except it is without evidence on record, whereas in the present case, it cannot be said that there is no material or evidence before the competent authority to pass order of detention against a person, who is transporting and supplying huge quantity of liquor and selling it in the State. Therefore, if such person is not detained and thereby allowed to continue his activities, he would certainly bring more liquor from some unknown source within the State and if he sells such prohibited liquor to different persons, then there would be more issues of public order including law and order, and therefore, such a person is certainly required to be restrained from continuing such activities and for the purpose, order of detention is the only option.

8. If we peruse several judgments of this Court and Hon''ble Supreme Court, it becomes clear that generally Courts are lenient in quashing and setting aside order of detention and it may be quashed and set aside on any small ground viz. non-supply of material documents, non-supply of translated documents, absence of material to consider the person under particular definition, may be because of personal dispute between the parties or only few number of cases, etc. However, none of the judgments confirm that even if there is material to arrive at subjective satisfaction to detain a person, the order of detention cannot be passed. In other words, if subjective satisfaction is based upon the available material on record, the detention order cannot be quashed.

9. As discussed hereinabove, in the present case, the competent authority has relied upon the factual details regarding possession and sale of prohibited liquor by the petitioner, and therefore, it can never be said that there is any mistake, arbitrariness or perverseness in considering the petitioner as a dangerous person.

10. Learned Advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground that the registration of one offence by itself cannot bring the case of the detenu within the purview of definition of "bootlegger" under Sec. 2(b) of the Act. Learned Counsel for the detenu further submits that the illegal activity carried out as alleged, cannot have any nexus or bearing with the maintenance of the public order and at the most it can be said to be breach of law and order. Further, except statements of witnesses and registration of F.I. Rs. , no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detenu with breach of the public order.

11. Learned Counsel for the detenu, placing reliance on the decisions reported in the cases of (i) Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat, , (ii) Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, ; and (iii)

Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, , submitted that the case on hand is squarely covered by the ratio laid down in the aforesaid decisions. Learned Counsel for the detenu further submits that it is not possible to hold in the facts of the present case that the activities of the detenu with reference to the criminal case/s had affected even tempo of the society, posing a threat to the very existence of the normal and routine life of the people at large or that on the basis of the criminal case/s, the detenu had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by the rule of law by disturbing the public order.

12. The reported cases cannot be equated with the facts of the present case, wherein the petitioner is involved in transportation of liquor. It can never be said that carrying huge quantity of liquor in public and selling it, would not disturb the public order and would not affect the tempo of the society. Therefore, when there is a material before the competent authority that the petitioner is dealing with the huge quantity of liquor and the same is found from his possession, it can never be said that there is no material whatsoever against the petitioner so as to detain him to avoid disturbance of the public order in the State.

13. Learned A.G.P. for the respondent-State supported the detention order passed by the authority and submitted that the detenu is a bootlegger and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenu, indicating that the detenu is in habit of indulging into activities as defined under Sec. 2(b) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and the detention order deserves to be upheld by this Court.

14. Having heard the learned Counsel for the parties and considering the facts and circumstances of the case, it appears that the subjective satisfaction arrived at by the detaining authority is legal, valid and in accordance with law inasmuch as the offences alleged in the F.I.R/s. have all the bearing on the public order. The material is there to make out a case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the whole social apparatus is in peril disturbing public order at the instance of such person, hence it can be said that the detenu is a bootlegger within the meaning of Sec. 2(b) of the Act. There is material on record which shows that the detenu is acting in such a manner which is dangerous to the public order. In the cases of (i) Ranubhai Bhikhabhai Bharwad (supra), (ii) Ashokbhai Jivraj @ Jivabhai Solanki (supra) and (iii) Mustakmiya Jabbarmiya Shaikh (supra), the Hon''ble Supreme Court was of the opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of public order and at the most fall under the maintenance of law and order, whereas in the present case the facts are otherwise.

15. Though most of the cases are in favour of the detenu for quashing the order of detention on one or another ground, some of them are purely technical i.e. there is delay in passing order, there is delay in deciding representation, grounds

are not properly disclosed, full material is not provided, translation is not provided, etc., and ultimately on merits, it is always said that there is no disturbance of public order and question of law and order cannot be termed as public order; in my observation, in most of the cases, following few cases have been ignored wherein the Larger Benches of the Hon''ble Supreme Court has confirmed the order of detention. Some of them are referred hereunder.

I. In the case of Lawrence Joachim Joseph D'souza Vs. The State of Bombay, , though there is allegation against the petitioner regarding anti-national activities, the fact remains that as back as in the year 1956 so far as concept of detention is concerned, the Bench of five Judges of the Hon''ble Supreme Court has held that though allegations in the order of detention were not as precise and specific as might have been desired and specific as might have been desired, having regard to the nature of the alleged activities of the detenu, order of detention cannot be quashed. It is further held that there is no obligation under Arts. 22(5) and (6) of the Constitution to communicate to the detenu the decision and grounds for detention which would arise only if detenu feeling the grounds to be vague, asks for particulars. It is categorically stated that in absence of any request by the detenu, obligation to communicate the decision and not to disclose facts may be considered prejudicial to public interest, but the non-communication of the decision cannot be held to have hampered his constitutional right of representation and an obligation to communicate cannot be implied in those circumstances. It seems that this Full Bench judgment has never been overruled, and therefore, it cannot be ignored.

II. Whereas again in the case of Kanchanlal Maneklal Chokshi Vs. State of Gujarat and Others, , the Bench of three Judges of the Hon''ble Supreme Court has, relied upon the judgment in the case of Haradhan Saha Vs. The State of West Bengal and Others, . Instead of interpreting the observation of the Hon''ble Supreme Court, it would be appropriate to read the relevant paragraphs, which are reproduced hereunder :

"2. In Haradhan Saha Vs. The State of West Bengal and Others, , the vires of the provisions of the Maintenance of Internal Security Act was in question. One of the contentions was that Sec. 3 of the Act offended Art. 14 of the Constitution as it permitted the same offence to be a ground for detention in different and discriminatory ways. It was submitted that while A might be prosecuted but not detained preventively. B might not be prosecuted but only detained preventively, and C might be both prosecuted and detained preventively. Dealing with the contention, a Bench of five Judges of this Court explained the basic distinction between preventive detention and detention following upon conviction and observed :

"The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceedings. It does not overlap with prosecution even if it relies on

certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution."

The Court then referred to various earlier decisions and deduced the following principles :

"First merely because a detenu is liable to be tried in a Criminal Court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under Code of Criminal Procedure and even lodges a First Information Report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behavior of a person based on his past conduct in the light of the surrounding circumstances. Clearly, the Court did not lay down that the possibility of a prosecution being launched was an irrelevant consideration, not to be borne in mind by the detaining authority. All that was laid down was that the mere circumstances that a detenu was liable to be prosecuted was not by itself a bar to the making of an order of preventive detention. It does not follow therefrom that failure to consider the possibility of a prosecution being launched cannot ever lead to the conclusion that the detaining authority never applied its mind and the order of detention was, therefore, bad."

16. Thereafter, in Paras 3 to 7, the Bench of the three Judges of the Hon''ble Supreme Court has dealt with few more judgments wherein even different Bench of the Hon''ble Supreme Court has quashed and set aside the order of detention, but ultimately by distinguishing all those judgments, the three Judges Bench dismissing the appeal of the detenu, held that the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention and when very elaborate statement of facts clearly pointing to an application of mind by the detaining authority, it cannot be inferred that the detaining authority did not apply its mind to the relevant consideration so as to interfere with the order of detention.

III. In the case of *The Commissioner of Police and Others Vs. Smt. C. Anita*, , the Hon''ble Supreme Court has held that the High Court cannot substitute its own opinions for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. It is further stated that preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to punish a person for an offence committed by him. Thereby they are not parallel proceedings. It is further observed that public order, law and order and the security of the State fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.

IV. In the case of *Senthamilselvi Vs. State of Tamil Nadu and Another*, Hon''ble Supreme Court has held that non-supply of document which was merely referred to in grounds of detention without being relied upon for purpose of detention cannot be the ground for quashing the order. It is further held that conclusion that there was likelihood of detenu being released on bail, and therefore, order of detention would be proper. Since such conclusion was subjective satisfaction by the detaining authority based on materials before it, merely such satisfaction is not to be interfered with. It is further stated that there cannot be hard and fast rule as to the measure of reasonable time for disposal of representation and each case has to be considered on its own facts.

In view of the above, I am not inclined to allow this petition. Hence, the petition is dismissed. Rule is discharged.