

(2010) 08 GUJ CK 0132

In the Gujarat High Court

Case No : Special Civil Application No. 7571 of 2010

Mitesh @ Sunny Ram Avtar Sharma

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65(A)(E), 66(1), 81
Constitution of India, 1950 — Article 226

Citation : (2010) 08 GUJ CK 0132

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : M.R. Prajapati, for the Appellant; Maithili Mehta, Ld. Asst.
Government Pleader for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 10th May 2010 passed by the respondent No. 2 - Commissioner of Police, Vadodara City, in exercise of powers under Sub-section (2) of Section 3 of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"), whereby the petitioner has been detained as a "bootlegger".

2. Heard Mr. M.R. Prajapati, learned Counsel for the petitioner and Ms. Maithili Mehta, learned Assistant Government Pleader, for the respondents.

3. Mr. Prajapati has drawn the attention of the Court to the impugned order of detention to submit that the same is based on a solitary offence being C.R. No. III - 391 of 2010 dated 10th April 2010, registered with Makarpura Police Station for the offences under Sections 66(1)(b), 65(A)(E) and 81 of the Bombay Prohibition Act.

4. It has been submitted by the learned Counsel for the petitioner that it is a settled legal position that on registration of solitary offence, no order of

detention could have been passed as petitioner-detenu cannot be branded as "bootlegger". It has been further submitted that the activities of the petitioner cannot be said to be injurious to the public health or public order. It has been further submitted by the learned Counsel for the petitioner that there is gross delay in passing the order of detention as well as there is gross delay in executing the order of detention.

5. The Court is of the opinion that there is much substance in the arguments advanced by learned Counsel for the petitioner. A perusal of the entire grounds of detention clearly shows that the only ground for arriving at the subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order is that the petitioner is a bootlegger. There is nothing to show as to how the activities of the petitioner are prejudicial to the maintenance of public order nor is there any material on record to support such a finding. Merely on the basis of the fact that an offence under the Bombay Prohibition Act has been registered against the petitioner, the detaining authority has arrived at the subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order and public health. Insofar as the activities being prejudicial to public health, there is nothing on record to show as to how the activities of the petitioner are prejudicial to public health, or that the activities of the petitioner are causing or likely to cause widespread danger to life or public health. According to the detaining authority the activity of selling liquor, per se, amounts to an activity that is prejudicial to the maintenance of public order and public health.

6. Except the general statement, there is no material on record which shows that the petitioner-detenu is carrying out illegal activities of selling liquor which is harmful to the health of public. In the case of *Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat* reported in 2001(1) GLH 393 , having considered the decision of the Hon'ble Apex Court in the case of *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law and order" and not "public order".

7. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

8. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order of detention dated 10th May 2010 passed by the Police Commissioner, Vadodara City is quashed and set aside, and the detenu is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly.

9. Direct service is permitted.