

(2013) 10 GUJ CK 0125
In the Gujarat High Court

Case No : Special Civil Application No. 11927 of 2013

Rakesh @ Bhavsahab

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0125

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

Bench : Single Bench

Advocate : Subhadra G. Patel, for the Petitioner No. 1, for the Appellant; Moxa Thakkar, AGP for the Respondent No. 1 and Mr. Pratik B. Barot, Advocate for the Respondent No. 1-2, for the Respondent

Final Decision : Allowed

Judgement

S.G. Shah, J.—This petition is directed against the order of detention dated 28.5.2013 passed by respondent No. 2, in exercise of powers conferred u/s 3(1)/3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the Act") by detaining the detinue as a "bootlegger" as defined u/s 2(b) of the Act. Learned advocate for the detinue submits registration of solitary FIR itself cannot lead to disturbance of even tempo of public life and, therefore, the public order. He further submits that, except FIR registered under the Bombay Prohibition Act, there was no other material before the detaining authority whereby it could be inferred reasonably that the detinue is a "bootlegger" within the meaning of Section 2(b) of the Act and required to be detained as the detinue's activities are prejudicial to the maintenance of public health and public order. In support of the above submission, learned counsel for the detinue has placed reliance on judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, , Anil Dey Vs. State of West Bengal, , Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others, and Darpan Kumar Darpan Kumar Sharma @ Dharban Kumar Sharma Vs. State of Tamil Nadu and Others, and the recent judgment dated

28/3/2011 passed by the Division Bench of this Court (Coram: S.K. Mukhopadhyaya, C.J. & J.B. Pardiwala, J.) in Letters Patent Appeal No. 2732 of 2010 in Special Civil Application No. 9492 of 2010 (Aartiben vs. Commissioner of Police) which would squarely help the detenue.

2. Learned AGP submitted that registration of FIR would go to show that the detenue had, in fact, indulged into such activities, which can be said to be disturbing the public health and public order and in view of sufficient material before the detaining authority to pass the order of detention, no interference is called for by this Court in exercise of its power under Article 226 of the Constitution of India.

3. Having heard the rival submissions of the parties and perused the record of the case, I am of the view that solitary FIR registered under the Bombay Prohibition Act alone cannot be said to be sufficient enough to arrive at subjective satisfaction to the effect that the activities, as alleged, are prejudicial to the public order or lead to disturbance of public order. There has to be nexus and link for such activities with disturbance of the public order. On careful perusal of the material available on record and the ratio laid down by the Apex Court in above cited cases and the recent judgment dated 28.3.2011 passed by the Division Bench of this Court in Letters Patent Appeal No. 2732/2010, I am of the view that the activities of the detenue cannot be said to be in any manner prejudicial to the public order and, therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

4. The petitioner has argued on merits of FIR, referring certain judgments. However, discussion of such facts, prima facie at this stage, is not warranted since it may otherwise prejudice to the trial.

5. However, since all such orders are quashed on technical ground, the same shall not come in the way of the detaining authority to pass an appropriate order in future. In the result, the petition is allowed. The order of detention dated 18.5.2013 passed by the respondent No. 2 is quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.