

(2009) 04 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 2665 of 2009

Ravibhai Bhangibhai Makvana

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Bombay Prohibition Act, 1949 — Section 116B, 65AE, 66B, 81

Citation : (2009) 04 GUJ CK 0042

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

Bench : Single Bench

Advocate : Chetan B. Raval, for the Appellant; Mini Nair, Asst. Government Pleader for Respondent Nos. 2 - 3, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Heard Mr. Chetan B.Raval for the petitioner and learned A.G.P. Ms. Mini Nair 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 24-11-2008

passed by the District Magistrate,Bhavnagar, 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 himself in the illegal sale and distribution of country liquor. While passing the order of detention the detaining

authority has considered the fact of registration of two cases - CR No. 143/2008 dt.14-8-2008 for the offences punishable under Sections 66B,

65AE, 81 and 116(B) of the Bombay Prohibition Act and CR No. 188/2008

dt.27-10-2008 for the offences punishable under Sections

66B,65AE,81,116(B) and 98(G) and the statement of the accused in the prohibition cases. He was found to be in possession of total 3 Beer Tins

in pursuance of C.R. No. 143/2008 and 300 bottles of Foreign Liquor of different brands and 202 Beer Tins in pursuance of C.R. No. 188/2008

in the said offences.

4. The learned Advocate for the petitioner-detenu has assailed the order under challenge on various grounds as mentioned in the memo of

petition. However, this petition is capable of being disposed of on the sole ground as to whether there was cogent and credible material placed

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

5. To reach to the subjective satisfaction that the bottlegging activities of the petitioner were prejudicial to the maintenance of public order, the

detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or

were likely to cause 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 etc. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of

breach of law and order and the cases falling within the category of breach of public order.

6. In the present case, the two pending criminal cases registered against the petitioner under the Prohibition Act and the activities of the petitioner

of engaging himself in the illegal sale and distribution of country liquor can at the most be said to be involving law and order problem for which the

petitioner can be adequately punished. 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. In this context reference may be had to the

decision rendered in the case of Harpreet Kaur v. State of Maharashtra reported in 1992 SC 797, wherein it has been held that involvement of the

accused in fourteen offences including lifting of gas cylinders cannot be said to

be prejudicial to the maintenance of public tranquility and the authority was not justified in arriving at the subjective satisfaction that the activities of the petitioner were likely to affect the maintenance of public tranquility... Similarly, in the decision rendered in the case of Surajsinh alias Suru alias Suresh Lallusinh Rajput 2004(1) G.L.H.454 it has been held as under at para 7 of the judgment:

7. ...In order to bring the activities of a person within the expression of acting in any manner prejudicial to the maintenance of public order, the fall out and extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society....

7. In the result, the petition is allowed. The impugned order of detention dated 24.11.2008 passed by the District Magistrate, Bhavnagar, is hereby quashed and set aside and detenue 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.