
(2010) 10 GUJ CK 0168
In the Gujarat High Court

Case No : Special Civil Application No. 12505 of 2010

Vijaykumar Babubhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2010) 10 GUJ CK 0168

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : A.R. Shaikh, for the Appellant; N.J. Shah, AGP for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The detenu - Vijay kumar Babubhai Patel came to be detained on 27.8.2010 pursuant to the order dated 17.8.2010 passed by the District Magistrate, Surat on basis of material placed before him. The detaining authority took into consideration multiple offences registered against the Petitioner under the Bombay Prohibition Act (hereinafter referred to as "the Act"). The authority also recorded in its reasons that the activity of the detenu was detrimental to public health and public order and it was not possible to deter him from the activities by following the regular procedure of law.

2. It is contended that there is no material with the detaining authority to record the satisfaction that the activity of the Petitioner was detrimental to public health or public order. The material seized is not shown by any test to be detrimental to public health and therefore also, the order gets vitiated.

3. Learned AGP has opposed this petition.

4. The satisfaction about the activity of the Petitioner being detrimental to public health and public order is not supported by any cogent material like Chemical Examiner's report or other material to show that the material seized was dangerous to the public health.

5. The Apex Court in the case of The District Collector, Ananthapur and Another Vs. V. Laxmanna, has taken a view and therefore, attracting the provisions of the Act, the detaining authority must be satisfied on material available to it (such as report of Chemical Examiner) that the arrack dealt with by the detenu is dangerous to public health. In this case, no such material is on record and in this count also, the subjective satisfaction of the detaining authority gets vitiated.

6. The petition, therefore, deserves to be allowed and the same is allowed. The order dated 17.8.2010 detaining the detenu - Vijay kumar Babubhai Patel passed by the District Magistrate, Surat impugned in the petition is hereby set aside. The detenu be set at liberty forthwith, if not required in any other case. Rule is made absolute. No costs. Direct service is permitted.