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**(2014) 02 GUJ CK 0074**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 17095 of 2013**

Vinod Kumar Lalan Ray

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision : 18-02-2014**

**Acts Referred:**

Constitution of India, 1950 — Article 22(5) 226  
Essential Commodities Act, 1955 — Section 3 7

**Citation : (2014) 02 GUJ CK 0074**

**Hon'ble Judges : S.H. Vora, J**

**Bench : Single Bench**

**Advocate : H.R. Prajapati, for the Appellant; Bhavesh Hajare, AGP for the Respondent(s) No. 1, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.H. Vora, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner seeks to issue writ of mandamus or any other writ, direction and order to quash and set aside the order dated 12.11.2013 passed by the respondent No. 2 under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the Act") being arbitrary, illegal, malafide and suffering from non-application of mind and void ab initio. The facts leading to the filing of the present petition are as under:

1.1 The petitioner is holding a retail license being No. 671/1988 to run the Fair Price Shop at Udhna, Dist: Surat. The petitioner states that there is no antecedent and he runs Fair Price Shop successfully and satisfactorily since 1988. In the month of August 2013, the petitioner's Fair Price Shop was inspected and no illegality or irregularity was noticed, but after inquiry, the license of the petitioner was suspended for a period of 90 days by order dated 3.9.2013. Thus, the petitioner is unable to procure the supply of essential articles from the supply department and distributes amongst the card holders. According to the petitioner, a police case being II - C.R. No. 870 of 2013 has been registered on

28.9.2013 of the offence punishable under sections 3 and 7 of the Essential Commodities Act and though the inquiry was pending in the aforementioned offence registered against the petitioner, the petitioner was threatened that he would be detained under the Act and therefore, the petitioner approached this Court by filing Special Civil Application No. 15549 of 2013. On the basis of communication dated 17.10.2013 received by the PI, Udhna Police Station disclosing that no proposal for detention has been initiated, the petitioner withdrew the said petition on 22.10.2013. It is the case of the petitioner that despite the submission made before this Court, the respondents prepared the proposal for passing the order of detention against the petitioner and upon such apprehension, the petitioner approached this Court initially seeking issue of prohibitory order against the respondent No. 2 from passing the order of detention against the petitioner under the Act, but pending hearing of the petition, the petitioner came to be detained in pursuance of order of detention dated 12.11.2013 and therefore, the petitioner amended the petition suitably inter alia challenging the detention order. It is specific case of the petitioner that the detention order passed by the detaining authority suffers from mala fides, as till 22.10.2013, no proposal for detention was initiated. Still, however, on 12.11.2013, order of detention came to be passed, which vitiates the subjective satisfaction of the detaining authority. It is the case of the petitioner that the detaining authority has not considered the retracted statement of the petitioner dated 30.9.2013 and unnecessarily relied upon the confessional statement dated 24.9.2013 and therefore, non consideration of retracted statement of the petitioner would vitiate the subjective satisfaction of the detaining authority. It is specifically stated by the petitioner that the detaining authority has considered against the petitioner the aforementioned police case, which has been registered and it is further apprehended by the detaining authority that the petitioner is likely to continue his activity after released on bail. It is the case of the petitioner that the detaining authority failed to take into consideration the bail application and the order granting bail dated 30.10.2013. According to the petitioner, the bail application and the bail order are vital and important documents as held by the Hon'ble Apex Court in case of Abdul Sathar Ibrahim Manik Vs. Union of India and others, and more particularly, conclusion No. 6 quoted in the decision rendered in case of Kamarunnissa and Others Vs. Union of India and another, which reads as under:

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case, the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

2. It is further the case of the petitioner that the detaining authority is required to supply the grounds of detention and other materials, which are legible and readable. It is specific case of the petitioner that the documents supplied at page Nos. 31, 33, 35, 37, 39, 631 to 633 are illegible documents and therefore, it

would amount to non-communication of the grounds of detention and therefore, continued detention of the petitioner becomes violative of Article 22(5) of the Constitution of India. In support of this contention, learned advocate Mr. Prajapati has referred to and rely upon decision rendered in case of Kantilal Mathudas Dave Vs. State of Gujarat and Others and in case of Bhupendra Singh v. Union of India reported in 1987(2) GLH 77.

3. Per contra, the respondent No. 2 has filed the Affidavit-in-reply inter alia alleging that as the petitioner was found to be indulged in the activity of black marketing of essential commodities, he came to be detained under the P.B.M. Act. It is stated that Supply Inspector, Surat found stock of 615 kg APL wheat and 396 ltr. kerosene unauthorizedly sold at higher rates to some non-card holders. It is further submitted that while checking of petitioner's Fair Price Shop on 27.8.2013, the Supply Inspector found 50 undisturbed bar-coded ration cards at the shop of the petitioner, which was illegally kept by him. Thus, as the petitioner was found indulged in the activity of black marketing, it was necessary to prevent him from black marketing and to maintain the supply of essential commodities and thus, since the detaining authority, after perusing all the relevant materials placed before him including the documents, found himself satisfied that the petitioner is indulged in black marketing activity and to prevent him, detention order has been passed. Therefore, it is submitted that the present petition may be dismissed.

4. I have hard the submissions of learned advocate Mr. Prajapati for the petitioner and learned AGP Mr. Hajare for the respondent State. I have minutely examined the documents supplied to the petitioner. There is no dispute that the documents at serial Nos. 631 and 632 are not at all legible, whereas other documents supplied to the petitioner at serial No. 31, 33, 35, 37 and 39 are partly illegible documents. Needless to say, it is imperative that the detaining authority has to serve the grounds of detention including all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority for making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make effective representation to the Advisory Board as well as the detaining authority. Therefore, non-supply of legible copies of the documents i.e. aforementioned FIR dated 28.9.2013 renders the order of detention illegal and bad. The failure of the detaining authority to supply legible copies of said document vitiates the detention order as has been held by this Court in case of Kantilal Mathuradas Dave (supra) and Bhupendra Singh (supra) cited by learned advocate Mr. Prajapati for the petitioner at bar. This failure on the part of the detaining authority to supply legible and readable copy of the said relevant document to the detenu for making effective representation before the detaining authority infringed the petitioner's right under Article 22(5) of the Constitution of India.

5. Admittedly, the detaining authority has considered the fact that the police case

has been registered against the petitioner on 28.9.2013 for the offences punishable u/s. 3 and 7 of the Essential Commodities Act being II - C.R. No. 870 of 2013. In the grounds of detention, it is stated by the detaining authority that the petitioner is likely to continue his activity after his release on bail. Admittedly, the petitioner released on bail on 30.10.2013. Though the petitioner was on bail on 30.10.2013, the detaining authority in its order dated 12.11.2013 states that the petitioner would continue his activities after release. According to the Hon'ble Apex Court, in the decision cited at bar, it is held that in case where the detenu is released on bail and is at liberty at the time of passing the order of detention, in such case, bail application and the order granting bail should necessarily be placed before the authority and the copy should also be supplied to the detenu. In the instant case, the detaining authority has not only supplied the copy of said document, but was unaware of the fact that on the date of passing of the order of detention, the petitioner was already on bail as per order dated 30.10.2013. So, this amounts to non-application of mind on the part of the detaining authority and therefore, the order of detention requires to be quashed and set aside.

6. One more fact is required to be considered is such that the detaining authority by order dated 3.9.2013 suspended the petitioner's license for 90 days. Meaning thereby, during the period from 3.9.2013 to 3.12.2013, the petitioner's license was under suspension and still, however, the detaining authority formed a subjective satisfaction that the petitioner would continue to indulge in the black marketing activity without supply of essential articles by the supply department. This is one more reason to interfere with the order of the detaining authority failing to consider as to how the petitioner would indulge in the black marketing activities in absence of license and further in absence of any supply of essential articles by the supply department. The net effect of the above discussion is such that present petition is allowed and the detention order dated 12.11.2013 passed by the respondent No. 2 is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.