

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
LETTERS PATENT APPEAL No. 2732 of 2010
In
SPECIAL CIVIL APPLICATION No. 9492 of 2010

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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AARTIBEN W/O NANDUBHAI JAYANTIBHAI SUJNANI - Appellant(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :

MR ANIL S DAVE for Appellant(s) : 1,
None for Respondent(s) : 1, 3,
GOVERNMENT PLEADER for Respondent(s) : 2,

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**CORAM : HONOURABLE THE CHIEF JUSTICE MR. S.J.
MUKHOPADHAYA**

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 28/03/2011

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

This writ of habeas corpus has been preferred by the petitioner, a lady, challenging the order of detention passed by the Commissioner of Police, Ahmedabad city, in exercise of powers conferred on him under sub-section(1) of section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the PASA Act') and also for an order to set her free from detention.

Learned Single Judge rejected the Special Civil Application vide judgment and order dated 8th October 2010 after finding no illegality in the order of detention, against which, this Appeal has been preferred.

We take notice of the fact that the appellant - writ petitioner has been detained as a 'bootlegger'. We also take notice of the fact that in the grounds of detention dated 11th June 2010, the detaining authority has relied upon four cases which have been registered against her for the offences punishable under the provisions of the Bombay Prohibition Act.

All these cases have been shown as pending investigation. Out of the four cases which have been relied upon, the first two cases are of the year 2007 and 2008 respectively and the other two cases are of the year 2010. Relying upon the registration of four cases against the appellant-detenu under the Bombay Prohibition Act, the detaining authority has reached to the subjective satisfaction that the activities of the appellant as a 'bootlegger' have disturbed the public order.

Section 2(b) of the PASA Act defines the term 'bootlegger', which reads as under:-

"S.2(b)"bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 (Bom.XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animals, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above

by or through any other person, or who abets in any other manner the doing of any such thing."

Section 3 of the PASA Act speaks about the power to make orders detaining certain persons. It reads as under:

"Sec.3 Power to make orders detaining certain persons:

(1) *The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*

(2) *If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.*

(3) When any order is made under this section by an authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, has a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

Explanation:- For the purpose of this subsection, public order shall be deemed to have been affected adversely or shall be deemed likely

to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any 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 or public health."

In this connection, we may refer to a decision of the Supreme Court in *Pushker Mukherjee v/s. State of West Bengal* [AIR 1970 SC 852], where the distinction between 'law and order' and 'public order' has been clearly laid down. The Court observed as follows :

"Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation

between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Having heard the learned counsels for the respective parties, having perused the judgment of the learned Single Judge and having gone through the grounds of detention, in our opinion, the detaining authority has failed to substantiate that the alleged antisocial activities of the appellant-detenu adversely affect or are likely to affect adversely the maintenance of public order. Just because four cases have been registered against the appellant-detenu under the Bombay Prohibition Act, by itself, do not have any bearing on the maintenance of public order. The appellant may be punished for the alleged offences committed by her but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community

much less public health. It may be that the appellant detenu is a 'bootlegger' within the meaning of Section 2(b) of the PASA Act, but merely because she is a 'bootlegger' she cannot be preventively detained under the provisions of the PASA Act unless, as laid down in sub-section (4) of Section 3 of the PASA Act, her activities as a 'bootlegger' affect adversely or are likely to affect adversely the maintenance of public order.

We also take notice of the fact that the order of detention is dated 11th June 2010. The appellant-detenu has already undergone about nine months of detention and the order is to remain in force for a period of one year.

Having regard to the material on the basis of which the subjective satisfaction of the detaining authority has been based and the fact that the appellant-detenu has already undergone about nine months of period of detention, we deem it fit and proper to quash the order of detention.

Accordingly, we allow this Letters Patent Appeal. Consequently, the judgment and order dated 8th October

2010 passed by the learned Single Judge and also the detention order dated 11th June 2010 are quashed and set-aside. The main writ petition being Special Civil Application No.9492/2010 stands allowed. The detenu be set at liberty forthwith, if not required in any other case.

In the result, the Appeal succeeds and the same is allowed. No order as to cost.

(S.J.Mukhopadhaya, CJ.)

(J.B.Pardiwala, J.)

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