IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11800 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

==========

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 or any order made thereunder ?	

==========

DILIPSINH @ KALU BHUPATSINH DABHI THROUGH VIDYABA DILIPSINH DABHI
Versus
STATE OF GUJARAT

==========

Appearance:
MR SIDDHARTH R KHESKANI(9483) for the Petitioner(s) No. 1
MS JIRGA JHAVERI, ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the Respondent(s) No. 1
RULE SERVED(64) for the Respondent(s) No. 1,2,3

==========

CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

Date : 24/12/2020

CAV JUDGMENT

1. This is a petition under Article 226 of the Constitution of India, seeking quashment of the detention order bearing No. PCB/DTN/ PASA/518/2020, Dated: 21.07.2020, passed by the Police Commissioner, Ahmedabad City, under the Gujarat Prevention of Anti-

Social Activities Act, 1985 ('PASA Act', hereinafter).

1.1 Respondent-authority has relied on the two offences registered against the petitioner for detaining him under the PASA Act, the details whereof, read thus:

1.	Narol Police Station, Prohibition C.R. No: 11191065200342/20 05.05.2020	Sections 66B, 65A,E, 81 and 116.1B of the Gujarat Prohibition Act	2364 bottles English liquor, Rs.366000/-	14.07.2020 Anticipatory Bail 15.05.2020	Police Investigation is going on
2.	Narol Police Station, Prohibition C.R. No: 11191065200383/20 12.05.2020	Sections 66B, 65A,E, 81 and 116.1B of the Gujarat Prohibition Act	3480 bottles English liquor, Rs.504000/-	15.07.2020 Anticipatory Bail 06.07.2020	Police Investigation is going on

2. Thus, these are the offences, wherein, the present petitioner is alleged to be involved and there also, no role is attributed to him. Since, the vehicle involved in the alleged offence is not owned by the present petitioner.. He has already been bailed out by the competent Court, and therefore, there is no justification in continuing him under the detention. He is, therefore, before this Court, seeking following prayers:

"6. …

(A) To allow this application

(B) To issue a writ of habeas corpus and / or any other writ, order or directions, quashing and setting aside the order of detention bearing No. PCB/DTN/PASA/518/2020, dated 21.07.2020, passed by Police Commissioner, Ahmedabad City, Ahmedabad and set the petitioner at liberty;

(C) To dispense with the filing of affidavit as the petitioner is in jail;

(D) …"

3. This Court has heard the learned Advocate, Mr. Kheskani, for the petitioner, who has fervently urged that the petitioner is not the owner of the vehicle in which the transport of the contraband material was happening. He also, further, urged that he was also not found with the said vehicle. According to him, in the offence registered against him, he has no role to play. He has already been granted bail by the competent Court and there is no breach of peace. If, a person is detained under the PASA; there is no sanctity of the bail order, especially, when the State has chosen not to challenge the same. It is, further, urged that these are extraordinary powers, which are not to be invoked, when the ordinary law of the land can take care of the situation. He emphasized that there is no link to connect the present petitioner with the crime in question and the major link, which is missing is that there is nothing to indicate, as to how the activities of the petitioner, in any manner, would prejudice the maintenance of the public order and his being a bootlegger is not sufficient. He, further, has urged that there is no report of any Forensic Science Laboratory, which may indicate that the act of the petitioner, in any manner, may cause the issue of public health, and

thereby, the issue of maintenance of the public order.

4. Learned AGP appearing for the respondent-State has strongly objected to the same and has urged that once, the authority concerned has arrived at the subjective satisfaction on the strength of the material presented before it, there is no reason for the Court to substitute the same with its own decision, while examining the very material. He heavily relied on the decision of the Apex Court in '***KANUBHAI ZALA VS. STATE OF GUJARAT***', 1999 (2) GLH 415. He also has, further, urged that it is true that the report from the FSL has not been obtained, but, that *per se* cannot predetermine that the material seized is not being injurious to the public health. He urged that sub-Section (4) to Section 3 of the PASA Act provides that a person, who, 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, his activities would be covered under this section. He emphatically urged before this Court that the State has been following the policy of a 'Dry State', and therefore, any person, who seeks to indulge into activity of the bootlegging, is covered under Section 2(b) of the PASA Act and he can be restrained by the competent authority for preventing him from reoccurrence of such activities. He, however, fairly agreed that after the petitioner came to be granted bail, no attempt was made by the respondent-State to challenge the order granting him bail.

5. Having, thus, heard both the sides and having carefully examined the material on record, profitable it would be to refer to the definition of the 'Bootlegger' as defined under Section 2(b) of the PASA Act, which reads thus:

> *"(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 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 animal, 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;"*

5.1 Thus, bootlegger is 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 and the rules and orders made there under or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, 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. Further, sub-Section (4) to Section 3 of the PASA Act provides that a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order", when such a person is engaged in or is making preparation for engaging in any activities, whether, as a bootlegger or common gambling house paper or person 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. Further, the explanation to this section provides that the 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. Therefore, if, the State is of the opinion that it is necessary to prevent such a person from indulging into similar such activities, it can detain such a person, as provided under sub-Section (1) of Section 3 of the PASA Act.

5.2 Thus, as is held in the case of '***KANUBHAI ZALA'*** (Supra), the Court is not to interfere, if, it finds that the subjective satisfaction arrived at by the State authorities is based on the material presented before it and the authority concerned has applied its mind and its potentiality and has acted to prevent a person from indulging into activities, in any manner, prejudicial to the maintenance of the public order. The Court may, at the same time, cannot disregard the marked distinction, which has been made out over the period of time by various decisions of the Apex Court, such as in the case of '***PUSHKER MUKHERJEE V. STATE OF WEST BENGAL',*** AIR 1970 SC 852, where, the Apex Court emphatically held that the activities which causes the issue of law and order may not be regarded as the activities, which may prejudice the maintenance of the public order. However, the act of crime shall be capable of causing a dent in the law and order situation, but that, *per se* may not be a ground for invoking the powers vested in the authority under the preventive detention law. The case of law and order are to be dealt with under the powers vested in the authorities under the provisions of the ordinary criminal law. However, a person cannot be detained merely on the ground that there is disturbance of public order and there shall have to be a grave form, which affects the community or the public at large and a case shall have to be made out before the Court to upheld the decision of the detaining authority in invoking the powers of law of detention.

5.3 In '***ARUN GHOSH V. STATE OF WEST BENGAL'*****,** (1970) 1 SCC 98, the Hon'ble Supreme Court has observed and held that the Public

order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals, which do not disturb the society to the extent of causing a general disturbance of public tranquility. The Apex Court, further, emphasized that it is the degree of disturbance and its effect upon the life of the community in a locality, which determines, whether the disturbance amounts only to a breach of law and order or not.

5.4 This Court notices that there is absence of report of FSL in their material, which would likely to indicate that the act of reoccurrence are having potentiality of affecting adversely public health or causing danger to the life or the public health. Undoubtedly, the State follows the policy of the being a dry state and the activities of the bootlegging is to be dealt with under the special law of the Gujarat Prohibition Act. The philosophy, which is being practiced, is that someone's activity is adversely affecting or likely to adversely affect the maintenance of public health, and therefore, such activities need to be also curtailed and prevented. However, noticing the fact that the petitioner, in the instant case, is neither the owner of the vehicle nor was found with the same, and these being the only offences and also in absence of any other material, emerging on the record, the order of detention cannot be sustained. This court, therefore, deems it appropriate to interfere with the order of detention, by holding that the mere disturbance of law and order would not entitle the respondent-authority to detain a person under the preventive detention law.

6. Resultantly, this petition is ***ALLOWED*** and the impugned order, Dated: 21.07.2020, passed by the respondent–authority under sub-Section (2) of Section 3 of the PASA Act is ***QUASHED*** and set aside.

The petitioner is ***ORDERED*** to be set at liberty forthwith, if, he is not required in custody in connection with any other case.

6.1 While so doing, the petitioner is cautioned to ***COMPLY*** with the conditions imposed by the trial Court, while releasing him on regular bail, scrupulously and any breach of the same shall ***ENTITLE*** the respondent authority to take stringent actions against the petitioner. Further, he shall ***MARK PRESENCE*** before the nearest police station ***ONCE*** in a period of fifteen days, for the period of next ***SIX MONTHS***.

6.2 Office to send a copy of this order to the concerned authority through E-mail or Fax, ***FORTHWITH***. Rule is made absolute, accordingly.

(SONIA GOKANI, J)

MISHRA AMIT V./UMESH