IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13848 of 2020

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SANDIPKUMAR ALIAS PARAS ALIAS AARYA VINODKUMAR JOSHI

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:
MR VO JOSHI(5883) for the Petitioner(s) No. 1
MR MANRAJ BAROT, ASST GOVERNMENT PLEADER(1) for the Respondent(s) No. 1
RULE NOT RECD BACK(63) for the Respondent(s) No. 2,3

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CORAM: **HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 23/12/2020

ORAL ORDER

1. This petition has been filed by the petitioner-detenu against the order of detention passed by the respondent detaining authority dated 31.08.2020, in exercise of powers conferred on him under sub-section (1) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, 'the PASA Act') and also for an order to set the detenu free from detention.

2. The order of detention along with the grounds supplied to the detenu are suggestive of the fact that the petitioner has been detained labelling him as an "immoral traffic offender" as provided under Section 2(g) of the PASA Act. The grounds of detention are also suggestive of the fact that the detaining authority has taken into consideration two cases under the Prevention of Immoral Traffic Act, 1956.

3. Learned advocate appearing on behalf of the petitioner-detenu has submitted that in the order of detention it is stated that the detenu is carrying on anti-social activities, and on the basis of just two offences registered against the detenu, he has been termed as 'immoral traffic offender' within the meaning of Section 2(g) of the PASA Act. He further submits that in the impugned order the activities of the detenu are said to be dangerous and affecting the maintenance of 'public order' and 'public health'. In support of his case, he has C/SCA/722/2015 JUDGMENT placed reliance on a decision of this Court passed in the case of Sohanlal Surajram Visnoi vs. State of Gujarat and other, reported in 2004(2) GLR 1051, wherein it was held as under:

> "It may be noted that the contention advanced on behalf of the petitioners that no preventive detention order can be recorded in a solitary incident or instance or offence cannot be accepted in toto. The detaining authority can pass the order of detention even on the basis of a solitary incident or instance, provided there is justifiable subjective satisfaction on objective material and consideration that such incident or offence is likely to create disturbance of Public Order. Emphasis is laid on Public Order and not on Law and Order which belongs to the realm of general law. After having taken into account the statutory definitions of the persons branded as bootlegger or dangerous person under the P.A.S.A. Act, and detailed factual matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the Public order or likely to create public disturbance prejudicial or adverse to the maintenance of Public Order, and therefore, the continued detention of the detenu in each case has not been shown to be justifiable....."

Mr.Prajapati, therefore, submits that the impugned order deserves to be quashed and set aside.

4. Learned AGP appearing on behalf of the respondent - State has supported the order of detention as well as the grounds stated therein and has submitted that the respondent authority has passed the impugned order after taking into consideration all the facts and circumstances of the case, and hence, no case is made out for interference by this Court.

5. Having heard the learned counsel for the parties and having gone through the grounds of detention, in my opinion, the detaining authority has failed to substantiate that the alleged antisocial activities of the petitioner-detenu adversely affect or are likely to affect adversely the maintenance of public order. Just because two cases have been registered against the petitioner-detenu under the Immoral Traffic Act, by itself, does not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him 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 petitioner-detenu is an 'immoral traffic offender' within the meaning of Section 2(g) of the PASA Act, but merely because he is an 'immoral traffic offender' he cannot be preventively detained under the provisions of the PASA Act. Mere involvement of the detenu in such activity may not amount to dangerous activity by the detenu and mere mention of them, unless supported by any evidence, cannot be said to be material germane for the purpose of arriving at the subjective satisfaction that the activity of the detenu is prejudicial to the maintenance of 'public order' and 'public health'.

7. I am, therefore, of the view that the detaining authority has passed the order of detention without there being any credible or cogent material

on record in this behalf. I have considered the factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also considered the judgment of this Court in the case of Sohanlal Sujaram Visnoi (supra). In view of the facts and circumstances of the present case and also the ratio laid down in the case mentioned above, the order of detention cannot be sustained and it deserves to be quashed and set aside.

8. In the result, this petition succeeds and is hereby allowed. The order of detention dated 31.08.2020 passed by the respondent authority is hereby ordered to be quashed and the detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute. Direct service is permitted. Registry to communicate the order to the jail authorities by way of fax/email forthwith.

(BIREN VAISHNAV, J)

DIVYA / JYOTI V. JANI