IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21429 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE VIMAL K. VYAS Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SHRI SHANI @ SHANTU S/O SHANTILAL KANTHARIYA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. KISHAN H DAIYA(6929) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 1
MR LB DABHI, AGP for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE VIMAL K. VYAS

Date : 11/06/2024
ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. The petitioner herein namely Shri Shani @ Shantu

Shantilal Kanthariya came to be preventively detained vide the detention order dated 14.12.2023 passed by the Police Commissioner, Surat, as a bootlegger as defined under Section 2(b) of the Gujarat Prevention of Anti-social Activities Act, 1985 (herein after referred as 'the Act of 1985).

2. By way of this petition, the petitioner has challenged the legality and validity of the aforesaid order.

3. This Court has heard learned counsel Mr. Kishan Daiya and Mr. LB Dabhi, learned Additional Public Prosecutor for the respondent State.

4. Learned advocate for the detenue submits that the grounds of detention has no nexus to the "public order", but is a purely a matter of law and order, as registration of the offence cannot be said to have either affected adversely or likely to affect adverse the maintenance of public order as contemplated under the explanation sub-section (4) of Section 3 of the Act, 1985 and therefore, where the offences alleged to have been committed by the detunue have no bearing on the question of maintenance of public order and his activities could be said to be a prejudicial only to the maintenance of law and order and not prejudicial to the maintenance of public order.

5. On the other hand, learned State Counsel opposing the application contended that, the detenue is habitual offender and his activities affected at the society at large. In such set of circumstances, the Detaining Authority, considering the antecedents and past activities of the detenue, has passed the impugned order with a view to preventing him from acting in

any manner prejudicial to the maintenance of public order in the area of Surat.

6. Having considered the facts as well as the submissions made by the respective parties, the issue arise as to whether the order of detention passed by the Detaining Authority in exercise of his powers under the provisions of the Act of 1985 is sustainable in law?

7. The order impugned was executed upon the applicant and presently he is in Central Jail, Baroda. In the grounds of detention, a reference of one criminal case registered against the applicant under the Prohibition Law was made and further it is alleged that, the activities of the detenue as a “bootlegger” affects adversely or are likely to affect adversely the maintenance of public order as explained under Section 3 of the Act of 1985. Admittedly, in the said offence, the applicant was granted bail.

8. After careful consideration of the material, we are of the considered view that on the basis of one prohibition case, the authority has wrongly arrived at the subjective satisfaction that the activities of the detenue could be termed to be acting in a manner ‘prejudicial to the maintenance of public order’. In our opinion, the said offence does not have any bearing on the maintenance of public order. In this connection, we may refer to the decision of the Apex Court in the case of ***Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad, 1989 Supp (1) SCC 322***, wherein, the detention order was made on the basis of the registration of the two prohibition

offences. The Apex Court after referring the case of ***Pushkar Mukherjee Vs. State of Bengal, 1969 (1) SCC 10***, made a distinction between ‘law and order’ and ‘public order’. Paras-17 & 18 of decision read thus:

> *“17. In this connection, we may refer to a decision of this Court in Pushkar Mukherjee v. State of West Bengal, where the distinction between `law and order' and `public order' has been clearly laid down. Ramaswami, J. speaking for the Court observed as follows:*
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> > *10. "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."

18. In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti- social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do 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. It may be that the petitioner is a bootlegger within the meaning of section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

9. For the reasons recorded, we are of the considered

opinion that, the material on record are not sufficient for holding that the alleged activities of the detenue have either affected adversely or likely to affect adversely the maintenance of public order and therefore, the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law.

10. Accordingly, this petition stands allowed. The order impugned dated 14.12.2023 passed by the respondent authority is hereby quashed. We direct the detenue to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Sd/-
(ILESH J. VORA,J)

Sd/-

(VIMAL K. VYAS, J)

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