IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 16711 of 2025

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AKIL ISMAIL SHEKH THRO SHAIKH MOHMMAD TOSIF RIYAZBHAI

Versus

STATE OF GUJARAT & ORS.

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Appearance:
ADITYA R PARIKH(8769) for the Applicant(s) No. 1
MR MAULIK SONI, PUBLIC PROSECUTOR for the Respondent(s) No. 1
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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 23/12/2025

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. The detenue herein namely Akil Ismail Shekh came to be preventively detained vide the detention order dated 04.12.2025, passed by the Police Commissioner, 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 through Shaikh Mohammad Tosif Riyazbhai, the detenue has challenged the legality and validity of the aforesaid order.

3. This Court has heard learned advocate for the petitioner and learned APP for the respondent-State Authorities.

4. Learned advocate for the petitioner vehemently argued that there was no material available with the detention

authority to indicate as to how the public health or public order or public tranquility was disturbed in any manner. Thus, in absence of any such material on record, the order of detention ought not have been passed. It is further submitted by learned advocate for the petitioner that the impugned order is passed without application of mind and prima facie the order is passed mechanically.

4.1. Learned advocate for the petitioner further submitted that the impugned order was executed upon the petitioner and presently he is detained in the Bhuj Jail.

5. On the other hand, learned APP, opposing the present petition contended that the detenue is habitual offender and his activities affected at the society at large. Hence, 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 Ahmedabad City and lastly prayed to dismiss the present petition.

6. Having considered the facts as well as the submissions made by the learned advocates appearing for the respective parties, the core issue arises 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 or not?

7. We have carefully gone through the order passed by the concerned authority. It appears that the order impugned was executed upon the detenue and presently he is detained in Bhuj Jail. In the grounds of detention, reference of one criminal case for the offence punishable under Sections 65AE, 81, 98(2) etc. of the Gujarat Prohibition Act, registered with DCB police stations against the detenue on 18.11.2025 is made out.

7.1. In the impugned order, 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 the provisions of the the Act of 1985. Undisputedly, in the aforesaid alleged offences, the detenue was granted bail by the concerned court.

8. Considering the impugned order, it appears that the provisions of Section 2(b) of the Act of 1985 is referred by the concerned authorities. Hence, the same is required to be reproduced. The same 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."

9. After consideration of the available material, we are of the considered view that on the basis of one 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 considered opinion, the said offences do not have any bearing on the maintenance of public order. In this regard, we would like to refer the decision of the Apex Court in the case of **Dhanya M. v. State of Kerala and others** reported in **AIR 2025 SC 2868**. In para-9 and para-21 of the said decision, the Hon'ble Supreme Court has observed as under:

"9. It is well settled that the provision for preventive detention is an extraordinary power in the hands of the State that must be used sparingly. It curtails the liberty of an individual in anticipation of the commission of further offence(s), and therefore, must not be used in the ordinary course of nature. The power of preventive detention finds recognition in the Constitution itself, under Article 22(3)(b). However, this Court has emphasized in Rekha v. State of Tamil Nadu3 that the power of preventive detention is an exception to Article 21 and, therefore, must be applied as such, as an

exception to the main rule and only in rare cases."

.....

"21. This Court in SK. Nazneen (supra), had observed that the State should move for cancellation of bail of the detenu, instead of placing him under the law of preventive detention, which is not the appropriate remedy. Similarly, in Ameena Begum v. State of Telengana9 , this Court observed :

> *"59. ... It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention."*
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> *60. In Vijay Narain Singh v. State of Bihar [Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : 1984 SCC (Cri) 361] , Hon'ble E.S. Venkataramiah,*

J. (as the Chief Justice then was) observed : (SCC pp. 35-36, para 32)

32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court." (Emphasis supplied)"

10. 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.

11. Accordingly, this petition stands allowed. The order impugned dated 04.12.2025, 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.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

UMESH/-

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: CHAVDA UMESH(HC00203), Principal pvt Secretary, at High Court of Gujarat on 23/12/2025 17:31:52