IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 699 of 2021
In
R/SPECIAL CIVIL APPLICATION NO. 6853 of 2021

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KARANSINH CHETANSINH VAGHELA THROUGH WIFE VAGHELA BHUMIKABA KARANSINH

Versus

STATE OF GUJARAT

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Appearance:
MR MOHDDANISH M BAREJIA(10612) for the Appellant(s) No. 1
for the Respondent(s) No. 2,3
MS.SHRUTI PATHAK, AGP (99) for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH**
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 23/08/2021

ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1. Heard Mr. Mohddanish Barejia, learned counsel for the appellant and Ms. Shruti Pathak, learned Assistant Government Pleader for the State respondents.

2. This Letters Patent Appeal, under Clause 15 of the Letters Patent, is filed by the appellant challenging the judgment and order dated 24.06.2021 passed by the learned Single Judge in Special Civil Applications No. 6853 of 2021, whereby the writ petition challenging the order of preventive detention was dismissed.

3. The appellant was detained pursuant to order of detention dated 06.04.2021 passed by respondent No.1 in the backdrop of registration of offences against him before Danilimda Police Station under Sections 66(1)(b), 65(a), 65(e), 116-B, 98(2) and 81 of the Gujarat Prohibition Act, 1949 based on FIR dated 27.10.2020. Pursuant to the above order, the appellant is in jail.

4. In the challenge before the learned Single Judge in the writ petition under Article 226 of the Constitution of India, contentions were raised mainly about the detention of the appellant that he was arraigned in offences and as such, the detenue was not falling within the definition of "Bootlegger" as defined under section 2(b) of the Gujarat Prevention of Anti-social Activities Act, 1985 ("Act" for short). Various other contentions were raised before the learned Single Judge, including that there was no breach of law and order much less public order and that there were no past antecedents against the detenue and without exhausting such alternative remedy, precious fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India was taken away in a casual manner.

5. Learned Single Judge noticed that the subjective satisfaction exercised by the detaining authority deserves no interference and as such, the contention of the learned counsel for the petitioner-detenue came to

be negatived by confirming the order of detention.

6. Before us, similar grounds are raised to challenge the order of the learned Single Judge as well as the order passed by the detaining authority branding the appellant-petitioner as bootlegger as defined under section 2(b) of the Act. Reliance is placed on two decisions of this Court in the case of **Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City and another,** reported in **AIR 1989 SC 491** and another decision being **CAV Judgment dated 28.3.2011** rendered in **Letters Patent Appeal No.2732 of 2010** in support of the contentions. It is, therefore, submitted that the appellant-detenue deserves to be released by quashing and setting aside the orders passed by learned Single Judge whereby the order of detention is confirmed. It is next submitted that a recent Division Bench judgment of this Court dated 31.08.2020 passed in the case of **Vijay Alias Ballu Bharatbhai Ramanbhai Patni vs. State of Gujarat**, **being Letters Patent Appeal No.454 of 2020**, squarely covers the case of the present appellant.

7. As against the above, Ms.Shruti Pathak, learned Assistant Government Pleader, appearing for the respondents vehemently opposed the prayer of the appellant on the ground that the learned Single Judge has passed reasoned judgment and submitted that the procedure adopted

by the authority was followed in accordance with law. It is submitted that the powers conferred on the detaining authority and the procedural safeguards are not devised to allow persons to continue with criminal activities and take advantage of technical loopholes. Therefore, the order passed by the detaining authority as confirmed by the learned Single Judge deserves no interference.

8. Having regard to the facts and circumstances of the case and on a careful perusal of the order of detention containing the grounds vis-a-vis subjective satisfaction arrived at by the detaining authority in exercise of powers under section 3(1) of the Act and the materials placed on record, though the Court will be loathe in interfering with such subjective satisfaction of the detaining authority but at the same time, all other aspects including that of disturbance of public order, past antecedents of crime and on consideration of the definition of "bootlegger" as provided in section 2(b) of the Act, the appellant cannot be said to be a bootlegger, when the offence is solitary. Further, in the absence of material about disturbance to public order, we find that no compelling circumstance was available with the detaining authority to exercise power of preventive detention and the overall facts do not reveal that preventive detention of the detenue was warranted. Here we would like to refer to the decision of this Court in case of **Aartiben W/o Nandubhai Jayantibhai Sujnani vs.**

Commissioner of Police in L.P.A. No.2732 of 2010 dated 28.3.2011 in which observations made by Apex Court in the case of **Pushker Mukherjee vs. State of West Bengal,** reported in **AIR 1970 SC 852** are quoted, wherein distinction is drawn about public order and law and order. The Supreme Court observed in the said judgment as under:

> "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."

9. In the judgment dated 31.08.2020 in the case of **Vijay alias Ballu (supra)**, the issue relating to public order and law and order problem had been dealt with in detail. Law of preventive detention has to be construed not as in an ordinary criminal proceedings of detaining or arresting a person who is said to have committed crime where the procedure is provided and the remedy is available. However, the law of preventive

detention is to be strictly followed as per the statute and the settled law on the point. In the present case, we find that there is only a single FIR related to prohibition offences. By no stretch of imagination can we hold that such incidents could describe a person as a bootlegger.

10. Under the circumstances, in view of the judgment of this Court in the case of **Aartiben W/o Nandubhai Jayantibhai Sujnani vs. Commissioner of Police & 2 others** and considering the totality of circumstances, 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 a solitary offence has been registered against the appellant-detenu under the Gujarat Prohibition Act, that by itself, does not have any bearing on the maintenance of public order. The order of detention, therefore, cannot be sustained and deserve to be quashed and set aside.

11. For the foregoing reasons, the Letters Patent Appeal is allowed. The judgment and order passed by the learned Single Judge in Special Civil Applications No.6853 of 2021 dated 24.06.2021 is hereby quashed and set aside. The order of detention dated 06.04.2021 passed by respondent No.1 is accordingly quashed and set aside. The appellant is ordered to be set at

liberty forthwith if not required in any other offence.

(VIKRAM NATH, CJ)

(BIREN VAISHNAV, J)

ANKIT SHAH