IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 5809 of 2025

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ANIL @ DABLI MANSUKHBHAI BARAIYA (KOLI) THROUGH OM NARSINHBHAI BARAIYA

Versus

THE DISTRICT MAGISTRATE & ORS.

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Appearance:
MR ATIT D THAKORE(5290) for the Applicant(s) No. 1
MS CM SHAH, APP for the Respondents

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 01/05/2025

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE SANDEEP N. BHATT)

1. Challenge in this petition is made to the order passed by the **District Magistrate, Rajkot, dated 05.04.2025**, whereby the petitioner is detained under the Gujarat Prevention of Anti Social Activities Act, 1985.

2. Learned advocate for the petitioner has submitted that, mere filing of FIR against the petitioner itself is no ground, for the detaining authority, to arrive at the conclusion that the activities of the petitioner are prejudicial to the maintenance of the public order. It is further submitted that, no legally sustainable satisfaction is recorded by the detaining authority before passing the impugned order

and therefore the impugned order be quashed and set aside.

3. Learned Assistant Government Pleader for the respondent State Authorities has supported the detention order passed by the detaining authority and has submitted that the impugned order is based on sufficient material and the detaining authority has rightly arrived at the conclusion that the activities of the petitioner are prejudicial to the maintenance of the public order. It is submitted that this petition be dismissed.

4.1 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 ?

4.2 After careful consideration of the material on record, we find that the detaining authority has exercised the powers, treating the petitioner as a '**bootlegger**' within the meaning of **Section 2(b)** of the Act. The FIR/s, which is the basis to treat the petitioner as such a person is referred to in the impugned order and further details in that regard are on record. Said FIR and other material which is on record is considered by this Court. On conjoint consideration thereof it

transpires that, the detaining authority fell in error in treating the activities of the petitioner as prejudicial to the maintenance of the public order. The distinction between 'the law and order' and 'the public order' needs to be kept in mind, in view of the decision of the Hon'ble Apex Court in the case of ***Pushkar Mukherjee Vs. State of Bengal, 1969 (1) SCC 10***, wherein it is observed that mere disturbance of law and order leading to detention order is thus not necessarily sufficient for action under preventive detention Act.

4.3 Under the circumstances, we are of the considered view that on the basis of prohibition case/s, 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/s do 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 prohibition offence/s. The impugned order, on facts, fails on this test. The impugned order therefore needs to be quashed and set aside.

4.4 It is noted that, in the grounds of the detention,

the detaining authority has recorded to the effect that, according to him, the activities of the petitioner create a sense of alarm and feeling of insecurity in the minds of public at large, however on weighing this vis-a-vis the material on record, this Court finds that, the citation of such words is more in the nature of rituals rather than with any significance to the alleged activities of the petitioner.

4.5 In totality, we find that, the impugned order is unsustainable and needs to be quashed and set aside.

5. Accordingly, this petition is allowed. The impugned order passed by the **District Magistrate, Rajkot, dated 05.04.2025**, is quashed and set aside. The petitioner / detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute in above terms.

Direct service is permitted.

(ILESH J. VORA,J)

(SANDEEP N. BHATT,J)

M.H. DAVE

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MAHESHKUMAR HASMUKHLAL DAVE(HC00193), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 01/05/2025 13:15:54