

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 10093 of 2026**

=====

KARSHANBHAI PRAVINBHAI MAKWANA THRO. RADADIYA
SHAILESH HIRJIBHAI

Versus

STATE OF GUJARAT & ORS.

=====

Appearance:

MR AKASHKUMAR H PATEL(12877) for the Applicant(s) No. 1

MR. MANAN MAHETA APP for the Respondent(s) No. 1

RULE NOT RECD BACK for the Respondent(s) No. 3

RULE SERVED for the Respondent(s) No. 2

=====

CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

and

HONOURABLE MR.JUSTICE L. S. PIRZADA**Date : 22/07/2026****ORDER****(PER : HONOURABLE MS. JUSTICE GITA GOPI)**

1. The petitioner herein came to be preventively detained vide the detention order dated 23.06.2026 passed by the respondent authority as a “bootlegger” as defined under Section 2(b) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter 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 the learned advocates appearing for the respective parties.
4. Learned advocate for the detenu submits criminal cases have been registered against the detenu under the Prohibition Act and has been condemned as a bootlegger. Learned advocate for the detenu has submitted that without any evidence, the case has been registered against the detenu and there is no case of any public disorder. Learned advocate for the detenu has relied on the judgments in the case of ***Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad (City)*** reported in ***AIR 1989 SC 491*** and in the case of ***Pushkar Mukherjee Vs. State of Bengal***, reported in ***(1969) 1 SCC 10***.
5. Learned advocate for the detenu submitted 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 of 1985 and therefore, where the offences alleged to have been committed by the detenu 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, then the detention order becomes invalid.

6. On the other hand, learned APP for the State opposing the application contended that the detenu is a habitual offender and his activities affects the society at large. In such set of circumstances, the detaining authority, considering the antecedents and past activities of the detenu, has passed the impugned order with a view to prevent him from acting in any manner prejudicial to the maintenance of public order in the area of Bhavnagar.
7. Having considered the facts as well as the submissions made by the respective parties, the issue arises for

consideration as to whether the order of detention passed by the detaining authority in exercise of the powers under the provisions of the Act of 1985 is sustainable in law?

8. The order impugned was executed upon the detenu. In the grounds of detention, a reference of criminal case i.e. for the offence under Sections 65(a), 116(b), 81 and 83 of BNS with Bharatnagar Police Station was made and further it is alleged that the activities of the detenu 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.
9. After careful consideration of the material, we are of the considered view that on the basis of the said prohibition cases, the authority has wrongly arrived at the subjective satisfaction that the activities of the detenu could be termed to be acting in a manner ‘prejudicial to the maintenance of public order’. In our opinion, the said offences do not have any bearing on the maintenance of public order. In this connection, we

may refer to the decision of the Hon'ble Supreme Court in the case of **Piyush Kantilal Mehta** (*supra*), wherein the detention order was made on the basis of the registration of the two prohibition offences. The Hon'ble Supreme Court after referring the case of **Pushkar Mukherjee** (*supra*), held and observed that mere disturbance of law and order leading to detention order is thus not necessarily sufficient for action under preventive detention Act. Paras-17 & 18 are relevant to refer, which 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:

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.”

10. We are of the considered opinion that the material on record are not sufficient for holding that the alleged activities of the detenu alleging him as a bootlegger have either affected adversely or likely to affect adversely the maintenance of public order, we are of a considered view that the registration of cases against the present detenu under Prohibition Act would not have any effect on public order, unless it is proved by way of material on record that the activity of detenu has created tension in the area and has raised panic to adversely affect the public order. Therefore, it can be concluded that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law.
11. Accordingly, the petition is allowed. The order impugned dated 23.06.2026 passed by the respondent authority is hereby quashed. We direct the detenu to

be set at liberty forthwith, if is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(GITA GOPI,J)

(L. S. PIRZADA, J)

DIKSHA