A RASHIDMIYA @ CHHAVA AHMEDMIYA SHAIK

v.

POLICE COMMISSIONER, AHMEDABAD & ANR.

MAY 5, 1989

B [B.C. RAY AND S. RATNAVEL PANDIAN, JJ.]

Gujarat Prevention of Anti-social Activities Act, 1985: Sections, 2(b), 2(c), 3 and 6.

Preventive detention—Order—Grounds of detention—Severabi-
C *lity and validity of—'Bootlegger'—Activities of—Whether prejudicial to maintenance of public order.*

'Dangerous person'—Detenu—Whether should be a habitual offender under Chapter XVI or XVII or XXII of Indian Penal Code or
D *under Chapter V of Arms Act.*

Words and Phrases: 'Maintenance of public order'—'Bootlegger'—'Dangerous person'—Meaning of.

E **The petitioner was detained, under an order passed by the detaining authority under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The detaining authority reached his subjective satisfaction on the grounds (i) that the detenu was a 'bootlegger' within the meaning of Section 2(b) of the**
F **Act because he was indulging in criminal and anti-social activities by illegally storing and selling foreign liquor and beer and that four cases were registered against him under the Bombay Prohibition Act, 1949; (ii) that he was also a 'dangerous person' within the meaning of section 2(c) of the Act because he, as a member of a particular gang, was spreading an atmosphere of fear and terror by beating innocent people**
G **in the Ahmedabad city thus affecting the public order adversely and a case was also registered against him under Section 120(B), 212 and 307 of the Indian Penal Code, 1860 and Section 25 of the Arms Act besides under the provisions of various other Acts.**

The petitioner filed a writ petition in this Court challenging the
H **validity of the detention order contending that the conclusions drawn by**

the detaining authority were not supported by materials. A

Quashing the detention order and allowing the Writ Petition,

HELD: 1. To bring a person within the definition of Section 2(c) of the Act it must be shown that the person either by himself or as a member of or a leader of a gang habitually commits or attempts to B commit or abets the commission of offences punishable under Chapter XVI or XVII or XXII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. It must be shown that he is habitually committing or attempting to commit or abetting the commission of offences enumerated therein. [187-H; 188B]

1.1 In the instant case, the detenu is said to have committed C offences under Sections 307, 120-B, 212 of the Indian Penal Code and Section 25 of the Arms Act besides under the provisions of various other Acts. Only one case registered under the provisions of Section 307 of the Indian Penal Code and Section 25 of the Arms Act falls within the said definition clause. The other two offences registered under Sections 120-B D and 212 are not covered under Section 2(c). Therefore, this solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences. The general and vague allegations made in the grounds of detention that the detenu was taking active part in communal riots and entered into conspiracy to spread an atmosphere of terror being a E member of a particular gang in the absence of any specific instance or registration of any case thereof, cannot be construed as offences falling under any of the above three chapters of the Indian Penal Code or chapter V of the Arms Act enumerated under Section 2(c) so as to characterise the detenu as a 'dangerous person'. [188A-E]

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2. A conjoint reading of Section 2(b) and Section 3(4) with the explanation annexed thereto clearly spells out that in order to clamp an order of detention upon a 'bootlegger' under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a 'bootlegger' within the meaning of section 2(b) but also that the activities of the said bootlegger affect adversely or likely to affect G adversely the maintenance of public order. [188H, 189A]

2.1 In the instant case, the vague allegations in the grounds of detention that the detenu is the main member of a particular gang indulging in bootlegging activities and that he is taking active part in such dangerous activities, are not sufficient for holding that his H

activities affected adversely or were likely to affect adversely the maintenance of public order in compliance with sub-Section 4 of the Section 3 of the Act that the activities of the detenu have caused harm, dangeror alarm or a feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life, property or public health as per the explanation to Section 3(4). The offences registered in the four cases, under the Bombay Prohibition Act, 1949 against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order. [189A-D]

Ashok Kumar **v.** *Delhi Administration,* **[1982] 2 SCC 403 and** *Piyush Kantilal Mehta* **v.** *The Commissioner of Police, Ahmedabad City and Anr, Judgments Today,* **[1988] 4 703, applied.**

ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 395 of 1988.

(Under Article 32 of the Constitution of India).

Miss Kamini Jaiswal and S.C. Patel for the Petitioner.

T.U. Mehta and M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

RATNAVEL PANDIAN, J. This writ petition under Article 32 of the Constitution of India is filed by the petitioner (the detenu herein) canvassing the correctness of the detention order dated 30.8.88 made by the detaining authority namely Commissioner of Police, Ahmedabad city in exercise of the powers conferred on him under sub-Section 1 of Section 3 of the Gujarat Prevention of Anti-social Activities Act 1985 (hereinafter referred as the Act) with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad city. In pursuance of the above order, the detenu is detained in the Central Jail, Sabarmati. The detenu has been furnished with the copies of the grounds of detention and all other material documents inclusive of the statements of the witnesses on the basis of which the detaining authority reached his subjective satisfaction for passing this impugned order.

The sum and substance of the alleged activities of the detenu

mentioned in grounds of detention are that the detenu was indulging in criminal and anti-social activities in the area of Dariyapur Kalupur of Ahmedabad city by illegally storing and selling foreign liquor and beer either personally or through his associates and that in this regard the following four cases were registered under the provisions of the Bombay Prohibition Act of 1949. We reproduce that relevant portion giving the details of the cases as found in the grounds of detention:

Sr. No.	*Police Station*	*CR No.*	*Section*	*Qty Seized*	*Disposals*
1.	Kalupur	130/88	Prov. 66(B)	8 Ltr. beer	Pending in Court
2.	Kalupur	152/88	—	500 ML beer	order pending
3.	Kalupur	156/88	——	268 bottle foreign and 122 bottle box	Pending in Court
4.	Dariyapur	80/88	Prov. 66(B) 65(A)81	foreign liquor	order pending

From the above materials, the detaining authority has concluded that the detenu was a bootlegger within the meaning of Section 2(b) of the Act.

It is further stated that the detenu besides indulging in the activities of bootlegging, he and his companions were creating terror in that area by beating innocent people in public in Ahmedabad city which in turn affected adversely the maintenance of public order.

Further it is stated that the detenu and his associates always armed with dangerous weapons like bombs, cartridges etc. were threatening the people in the city of Ahmedabad in respect of which a case has been registered which is re-produced as set out in the grounds of detention:

S. No.	*Police Station*	*CR No.*	*Section*	*Disposal*
(1)	Kalupur	2/88	IPC 307, 120(B) 212, Terrorist Act, Sec. 3(1)(3)	Under inquiry

A Explosive Sec. 4,
5 Arms Act;
25(1)(A)(c);
Bombay Police
Act 135(1)

B In addition to the above it is alleged that the detenu, being the main member of the gang of Abdul Latif Abdul Wahab Shaikh entered into a conspiracy to spread an atmosphere of fear and terror among the residents of that area and also a sense of insecurity among the people.

On the above materials, mentioned in the grounds of detention, the detaining authority has come to the conclusion that the detenu is a C 'dangerous person' within the meaning of Section 2(c) of the Act.

Thus the detaining authority has found that the detenu was not only a 'bootlegger' but also a 'dangerous person' within the definitions of Section 2(b) and 2(c) of the Act. For drawing the above conclusion D the detaining authority has also relied upon the statements of the witnesses whose names are not disclosed.

Assailing the legality of the impugned order the learned counsel appearing on behalf of the petitioner put forth several contentions one of which being that the conclusions drawn by the detaining authority E that the detenu is a 'bootlegger' as well as a 'dangerous person' are not supported by the materials placed before him and that there is nothing to show that the activities of the detenu either affected or were likely to affect adversely the maintenance of public order.

We shall now deal with the above contention in the light of the F construction of the expressions 'bootlegger' and 'dangerous person' read with Section 3(4) of the Act with the explanation annexed thereto.

The expression "bootlegger" and "dangerous person" occurring in Section 2(b) and (c) of the Act read as follows:

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> *"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 H made thereunder, or any other law for the time being in

force or who knowingly expends or applies any money or supplies any animal, 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;

2(c) "dangerous person" means a person, who either, by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, (XLV of 1860), or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959)."

To bring the detenu herein within the definition of Section 2(b) of the Act, four cases are made mention of in the grounds of detention which we have already extracted. All the four cases were registered in the year 1988. The trials in respect of two of the four cases were pending before the Court and in respect of the other two, the orders were pending. Notwithstanding the result of those cases and the quantity of liquor seized from the detenu, we shall examine the legality of the detention order, in the ensuing part of this judgment, even assuming that the detenu is a 'bootlegger' within the ambit of Section 2(b) of the Act.

For the conclusions drawn by the detaining authority that the detenu was a 'dangerous person' as defined under Section 2(c) of the Act, the detaining authority has taken into consideration the registration of a case in crime number 2/88 in Kalupur police station. Added to that, it is generally stated in the grounds of detention that the detenu and his associates were beating the people in public and that the detenu had entered into a conspiracy to spread an atmosphere of fear and terror in the city of Ahmedabad city being the main member of the gang of Abdul Latif Abdul Wahab Shaikh. But no specific instance is given either in the grounds of detention order or in any of the statements of the witnesses.

To bring a person within the definition of Section 2(c) of the Act it must be shown that the person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or XVII or XXII of the Indian Penal Code or any of the offences punishable under

A Chapter V of the Arms Act. In the case registered in crime No. 2/88 in Kalupur police station, the detenu is said to have committed offences under Sections 307, 120-B, 212 of the Indian Penal Code and Section 25 of the Arms Act besides under the provisions of various other Acts. Though Section 307 falls under Chapter XVI, the offences under Sections 120-B and 212 fall under Chapters VI and XI of the Indian Penal B Code respectively. Therefore, these two offences are not covered under Section 2(c). The offence registered under Section 25 of the Arms Act falling under Chapter V of the said Act is included within the said definition clause. But what the section requires is that to bring a person within that definition, it must be shown that he is habitually committing or attempting to commit or abetting the commission of offences enumerated therein. In the instant case, the registration of C only one case is mentioned under the provisions of Section 307 of IPC and 25 of the Arms Act falling within the said definition clause. Therefore, this solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences. The general and vague allegations D made in the grounds of detention that the detenu was taking active part in communal riots and entered into conspiracy to spread an atmosphere of terror being a member of the gang of Abdul Latif Abdul Wahab Shaikh in the absence of any specific instance or registration of any case thereof, cannot be construed as offences falling under any of the above three chapters of the IPC or Chapter V of the E Arms Act enumerated under Section 2(c) so as to characterise the detenu as a 'dangerous person'.

Hence we are of the view that the conclusions drawn by the detaining authority that the detenu is a dangerous person is bereft of sufficient material as required under Section 2(c). Therefore, we hold F that the detenu cannot be termed as a 'dangerous person'.

No doubt as per Section 6 of the Act, grounds of detention are severable and as such the order of detention should not be deemed to be invalid or inoperative if one or some of the grounds are invalid. In the present case, the question for consideration is that even if the G impugned order cannot be sustained on the ground that the detenu is a 'dangerous person', can it be sustained on the other ground that the detenu is a 'bootlegger'. The answer is that the order could be sustained, provided there are materials to show that the bootlegging activities of the detenu affected adversely or were likely to affect the maintenance of public order. A conjoint reading of Section 2(b) and H Section 3(4) with the explanation annexed thereto clearly spells out

that in order to clamp an order of detention upon a 'bootlegger' under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2(b) but also that the activities of the said bootlegger affect adversely or likely to affect adversely the maintenance of public order. Reverting to the facts of this case, the vague allegations in the grounds of detention that the detenu is the main member of the gang of Abdul Latif Abdul Wahab Shaikh indulging in bootlegging activities and that the detenu is taking active part in such dangerous activities, are not sufficient for holding that his activities affected adversely or were likely to affect adversely the maintenance of public order in compliance with sub-Section 4 of Section 3 of the Act that the activities of the detenu have caused harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life, property or public health as per the explanation to Section 3(4).

The offences registered in the abovementioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

There is a catena of decisions dealing with the question of *'maintenance of public order'*. But we think that it will be sufficient to make reference to the following two decisions.

This Court in *Ashok Kumar* v. *Delhi Administration,* [1982] 2 SCC 403 has observed:

> "It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order."

In a recent decision of this Court in *Piyush Kantilal Mehta* v. *The Commissioner of Police, Ahmedabad City and Anr.*, Judgments Today 1988 (4) 703 a question similar to one before us arose for consideration. In that case, the allegations in the grounds of detention were that the detenu was a prohibition bootlegger, that he was indulged into the sale of foreign liquor and that he and his associates indulged in use of force and violence and also beating innocent citizens by which an atmosphere of fear was created. In that case the detenu was alleged to have been caught red-handed possessing English wines with foreign marks and in the second occasion he was caught while shifting 296

A bottles of foreign liquor in an Ambassador car. While dealing with that case, this Court observed as follows:

> "It is true some incidents of beating by the petitioner had taken place, as alleged by the witneses. But, such incidents, in our view, do not have any bearing on the maintenance of
B 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
C 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."

D The above observation, in our view, will be squarely applicable to the facts of this case, in view of the reasons, we have already adverted to in the earlier portion of this judgment.

Hence for all the reasons aforesaid, we allow the Writ Petition and quash the impugned order of detention and direct the detenu to be
E set at liberty forthwith.

T.N.A. Petition allowed.