

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 16143 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****Sd/-****and****HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

RAJENDRAKUMAR @ RAJ S/O KHEMABHAI MAKWANA  
Versus  
DISTRICT MAGISTRATE, AHMEDABAD

Appearance:

MR BHAVIK R SAMANI(8339) for the Petitioner(s) No. 1

MR. ADITYA JADEJA, LD. ASST. GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3,4

**CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 12/04/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present case, rule was issued by this Court on 24<sup>th</sup>

August, 2022. However, vide order dated 6<sup>th</sup> October, 2022, since no affidavit-in-reply was filed by the State, an interim relief in terms of Para-9(C) came to be granted. Today, when the matter is taken up for hearing, it is noticed that no affidavit-in-reply has yet been filed by the Detaining Authority.

2. In the present writ petition, the petitioner has assailed the order of detention dated 2<sup>nd</sup> August, 2022 passed by the respondent-authority under the provisions of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as “the Act, 1980”).

3. From the grounds of detention, while passing the detention order, the Detaining Authority has taken into consideration a solitary FIR which was registered against the petitioner as mentioned in the order of detention before the Sarkhej Police Station.

4. At the outset, learned advocate Mr. H.R. Prajapati appearing for the petitioner has submitted that the petitioner made a representation on 5<sup>th</sup> August, 2022 to the Detaining Authority, inter alia, contending that the petitioner is not doing the business of essential commodities. He is doing the business of transport and he is not connected with the black marketing of essential commodities. The petitioner has not indulged in any other offence and no first information report has ever been lodged against the petitioner. Despite the same, the petitioner has been falsely arraigned in the present offence under provisions of the Act, 1980. It is further submitted that the detaining authority has not forwarded the report and the facts to the State Government and merely on

assumption and presumption without considering any material on record, the detention order was passed which has rendered the continued detention illegal and, hence, the impugned order of detention is required to be quashed and set aside.

5. Learned advocate Mr. Prajapati has further placed reliance on Section 3 of the Act, 1980, more particularly, sub-section (3) and sub-section (4) thereof. He has submitted that the order of detention passed by the Competent Authority, i.e, the District Magistrate is required to be sent for approval to the State Government within the period as provided in sub-section (3) and, thereafter, when such order is approved by the State Government, the same is required to be further forwarded, within a period of seven days, to the Central Government and such order of detention is required to be reported. He has submitted that however in the present case, since no affidavit is filed by the respondent-State Authorities, the impugned order is required to be quashed and set aside since it is not known whether such order is being reported to the Central Government or not within the time stipulated under the provisions of sub-section (4) of section 3.

6. *Per contra*, learned AGP Mr. Aditya Jadeja has submitted that the impugned order does not require any interference as the same is appropriately passed. It is submitted that when the authorities found that the petitioner is engaged in such illegal activities and an FIR has been registered against him in this regard under the provisions of the Act, 1980, the authorities, in its wisdom, has decided to detain the petitioner so that such kind of further illegal activities can be prevented. It is submitted that the detention order is self-explanatory and

contains all the relevant facts including the registration of the aforesaid FIR and, hence, the impugned order may not be interfered.

7. The facts, as narrated herein above, would suggest that the impugned order of detention dated 2<sup>nd</sup> August, 2022 has been passed by the respondent-State Authorities, detaining the petitioner under the provisions of the Act, 1980. The impugned order of detention is premised on the basis of registration of a solitary FIR of the alleged irregularity committed by the petitioner in violation of the provisions of the Act. The said FIR is registered with the Sarkhej Police Station. It is not in dispute that the petitioner has been enlarged on bail in the aforesaid offence. In such circumstances, referred to above, we are of the view that in the absence of any affidavit filed by the respondent-authority specifying as to whether any report has been forwarded to the Central Government or not, as per provisions as referred to herein above, the order of detention would become vulnerable.

8. Thus, it appears that the order of detention which has been passed by the State Government along with the grounds were mandatorily required to be forwarded to the Central Government within a period seven days, however in the present case, the State Government has not forwarded the report to the Central Government together with the grounds on which the order has been passed within the stipulated period, and in the absence of such exercise being undertaken, the impugned order is required to be quashed and set aside on this ground.

9. One another aspect which we would like to record is that the petitioner has made a representation against the detention order on 5<sup>th</sup> August, 2022 to the District Magistrate, i.e, the Detaining Authority, however, nothing has been brought on record that whether such representation has been decided or not. It is also not coming on record whether the time limit, as prescribed under the provisions of Section 3 of the Act has been complied with or not. The State Government was required to approve the order passed by the Detaining Authority within the time limit as prescribed in sub-section (3) and the same has to be reported to the Central Government within a period of seven days as provided under sub-section (4) of the Act. However, nothing is pointed out to this Court as to whether such statutory provisions have been followed or not. Hence, the impugned order of detention is required to be quashed and set aside on this ground also.

10. On the substratum of the aforesaid analysis, the present application is allowed. The impugned order of detention dated 02.08.2022 is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

**(A. S. SUPEHIA, J)**

**(DIVYESH A. JOSHI,J)**

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