

(2020) 06 GUJ CK 0127

In the Gujarat High Court

Case No : R/Special Civil Application No. 22361 Of 2019

Aakibbhai Amiruddin Shaikh Through Ushmangani Amiruddin
Shaikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-06-2020

Acts Referred:

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(c), 3(2)
Arms Act, 1959 — Section 25(1)(B)(A)
Gujarat Police Act, 1951 — Section 135(1)
Indian Penal Code, 1860 — Section 294(B), 323, 354(A)(1)(ii), 506(2)

Citation : (2020) 06 GUJ CK 0127

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Salim M Saiyed, Soham Joshi

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule. Learned Assistant Government Pleader waives service.
2. Heard learned advocates appearing for the respective parties through Video Conferencing.
3. The present petition is directed against order of detention dated 4.12.2019 passed by the respondent "detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the Act") by detaining the petitioner "detenue as defined under section 2(c) of the Act.
4. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground

of registration of two offences under Sections 25(1)(B)(A) of Arms Act and Section 135(1) of the GP Act and Sections 354(A)(1)(ii), 323, 294(B) and 506(2) of the Indian Penal Code.

5. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence

was found during the course of investigation, which was also supplied to the detinue indicate that detinue is in habit of indulging into the activity as

defined under section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and

detention order deserves to be upheld by this Court.

6. Having heard learned advocates for the parties and considering the facts and circumstances of the case, it appears that the subjective satisfaction

arrived at by the law, inasmuch as the offences alleged in the FIR/s cannot have any bearing on the public order as required under the Act and other

relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detinue cannot be said

to be germane for the purpose of bringing the detinue within the meaning of section 2(c) of the Act. Unless and until, the material is there to make out

a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the society and that all social apparatus is in

peril disturbing public order at the instance of such person, it cannot be said that the detinue is a person within the meaning of section 2(c) of the Act.

Except general statements, there is no material on record which shows that the detinue is acting in such a manner, which is dangerous to the public

order. In this connection, it will be fruitful to refer to a decision of the Supreme Court in Pushker Mukherjee v/ s. State of West Bengal [AIR 1970 SC

852], where the distinction between 'law and order' and 'public order' has been clearly laid down. The Court observed as follows:

â??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.

7. In view of above, I am inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention dated 4.12.2019 passed by the respondent "detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case.

8. Rule is made absolute accordingly.

9. The Registry is directed to communicate this order to the concerned jail authority by fax or e-mail.