

(2010) 08 GUJ CK 0207
In the Gujarat High Court

Case No : Special Civil Application No. 9453 of 2010

Abdul Sattar Jummekha Mevali

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2)

Citation : (2010) 08 GUJ CK 0207

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : M.M. Tirmizi, for the Appellant; Janak Raval, AGP, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—By filing present petition the petitioner, under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order of detention dated 26.5.2010 passed, against the petitioner, by the respondent No. 2 - the Commissioner of Police, Ahmedabad, in exercise of power under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA Act"). The detenu is branded as "dangerous person".

2. Heard the learned Advocate for the petitioner and learned AGP for the respondents. No Affidavit in reply is filed by the respondents controverting the averments made by the petitioner.

3. The detenu came to be detained as "dangerous person" on his involvement in the offence being CR No. II-3098 of 2010 registered with Danilimda Police Station, Ahmedabad.

4. It has been submitted by the learned Counsel for the petitioner that the allegations made against the detenu are not correct; that the material collected by the detaining authority and looking to the statement recorded by the detaining authority it cannot be said that the alleged activities of the petitioner

would fall within the purview of "dangerous person"

5. I have gone through the grounds of detention and considered the arguments advanced by the learned Counsel for the petitioner as well as the learned A.G.P.

6. The Court is of the opinion that there is much substance in the arguments advanced by learned Counsel for the petitioner. The detaining authority has placed reliance on the aforesaid registered offences and statements of witnesses. After recording the subjective satisfaction about the detenu being a dangerous person and with a view to preventing his from acting in a manner prejudicial to the maintenance of public order, the impugned order of detention was passed by the detaining Authority.

7. Except the general statement, there is no material on record which shows that the detenu is acting in such a manner which is dangerous to the public order. There are number of decisions of this Court as well as the Hon''ble Apex Court on the point of relying on this point. In view of the ratio laid down by the Hon''ble Supreme Court in the case of (i) The District Collector, Ananthapur and Another Vs. V. Laxmanna, (ii) Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, and (iii) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, the court is of the opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of pubic order. In the case of Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat reported in 2001 (1) GLH 393 , having considered the decision of the Hon''ble Apex Court in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law and order" and not "public Order".

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order of detention dated 26.05.2010 passed by the Police Commissioner, Ahmedabad is 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. Direct service is permitted.