

(2016) 05 GUJ CK 0005

In the Gujarat High Court

Case No : Letters Patent Appeal No. 173 of 2016 In Special Civil Application No. 20569 of 2015

Ajimkhan @ Ajamkhan Sultankhan Pathan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

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

Citation : (2016) CriLJ 3950

Hon'ble Judges : Mr. R. Subhash Reddy, CJ. and Mr. Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : A.S. Timbalia, Advocate, for the Appellant No. 1; Ms. Manisha Lavkumar Shah, Government Pleader Assisted by Mr. Dhawan Jayswal, Assistant Government Pleader, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mr. R. Subhash Reddy, C.J. (Cav)—This Letters Patent Appeal is filed by the petitioner in Special Civil Application No.20569 of 2015 aggrieved by CAV judgment dated 11.01.2016, by which the learned Single Judge has dismissed the writ petition, wherein the appellant had challenged the order of detention dated 21.11.2015 bearing No.PCB/ DTN/ PASA/ 915/ 2015 passed by Commissioner of Police, Ahmedabad City, in exercise of powers under section 3 (2) of Gujarat Prevention of Anti-social Activities Act, 1985 (?PASA Act? for brevity).

2. In the grounds of detention it is stated that the appellant-petitioner is accused in Crime Register No.I-19 of 2015 registered on 04.03.2015 on the file of Gayakwad Haweli Police Station for the offences punishable under sections 143, 147, 148, 452, 436, 427 and 323 of the Indian Penal Code and section 135(1) of the Gujarat Police Act. It is also stated that the appellant-petitioner is accused in Crime Register No.I-3038 of 2015 registered on 19.04.2015 on the file of DCB Police Station, Ahmedabad, for the offences punishable under section 25(1-b) (a)

of the Arms Act. It is also stated that the appellant-petitioner is accused in Crime Register No.3061 of 2015 registered on 01.06.2015 with DCB Police Station for the offences punishable under section 25(1-b) (a) of the Arms Act.

3. Referring to the above said crimes, alleging that the appellant-petitioner falls within the definition of 'dangerous person' within the meaning of section 2(c) of PASA Act, and to prevent the anti-social activities of the petitioner which will likely to affect maintenance of public order, the order of detention is passed. Such order of detention is challenged on various grounds. Firstly, it is the case of the petitioner that he cannot be termed as a 'dangerous person', and in any event having regard to the crimes registered against the appellant-petitioner, it cannot be said that such activities alleged against the appellant-petitioner affect maintenance of public order, within the meaning of section 3 of PASA Act. It is pleaded that the allegations made against the appellant-petitioner are false and there is no contemporary material available with the detaining authority to indicate that public order is disturbed in any manner, therefore, the detaining authority has erred in passing the order of detention. It is also the case of the appellant-petitioner that the detaining authority has passed the order of detention without application of mind, by considering the irrelevant material, and alleging the facts which are not proved as per the F.I.Rs in the aforesaid cases, such order of detention is challenged. It is also pleaded that having regard to the sequence of events in which allegations are made against the appellant-petitioner by registering various crimes, the appellant-petitioner cannot be termed as a 'habitual offender' in view of the time lag between last crime registered and order of detention passed. In absence of any proximity and continuity of allegations, it cannot be said that the appellant-petitioner is a habitual offender. Further it is specifically pleaded that though tamancha and live cartridges were not seized from the appellant-petitioner in Crime Register No.3038 of 2015, which was registered on 19.04.2015 on the file of DCB Police Station and the detaining authority by recording finding that tamancha and live cartridges were seized from the petitioner, such order of detention was passed with reference to the aforesaid allegations. It is the case of the appellant-petitioner that it is the case of non application of mind on the part of the detaining authority while passing the order by considering the irrelevant material. Further, it is the case of the appellant-petitioner that having regard to the allegations made in the Crime Register which are yet to be tried, the appellant-petitioner cannot be termed as 'dangerous person'. It is also contended that in any event, having regard to the allegations made, it cannot be said that by such activities alleged against the appellant-petitioner public order is affected, within the meaning of section 3(2) of the PASA Act. During the course of hearing it is brought to our notice by the learned counsel that in Crime Register No.3038 of 2015, the appellant-petitioner was impleaded basing on the statement of co-accused subsequent to registration of crime. It is further pleaded that accused nos.1 and 2 in Crime Register No.3038 of 2015, against whom order of detention was passed on similar set of allegations, have approached this

Court by filing Special Civil Applications No.13547 of 2015 and 13442 of 2015, both the petitions were allowed by recording finding that general statements made against the petitioner, is no material to show that the petitioner is acting in such a manner which is dangerous to public order. Lastly, it is submitted that as order is passed depriving his liberty in violation of Article 22(5) of the Constitution of India, the learned Single Judge without considering various contentions advanced by the appellant-petitioner in proper perspective rejected the petition. It is submitted by Ms. Manisha Lavkumar Shah, learned Government Pleader appearing for the respondent-State that in a series of offences the appellant-petitioner was involved and shown as accused and there were cases where allegations are made against the appellant-petitioner that he was possessing weapons and live cartridges illegally in contravention of the provisions of the Arms Act. It is contended that having regard to series of crimes registered against the appellant-petitioner, he is a habitual offender and also a dangerous person within the meaning of section 2(c) of the PASA Act. It is also stated that such involvement of the appellant-petitioner in crimes is affecting maintenance of public order. Thus, there was no ground to interfere with the order passed by the learned Single Judge.

4. Having heard the learned counsel for the parties, we have also perused the order of the learned Single Judge and other material placed on record, on perusal of the provisions of section 3, subsections (1) and (2) of the PASA Act, it empowers District Magistrate to pass order of preventive detention, if the detaining authority is satisfied that any person is acting in any manner prejudicial to the maintenance of public order. The learned Single Judge, while considering various grounds raised by the petitioner has recorded finding that there is material on record which shows that the detenu is acting in such a manner and his activities are prejudicial to the maintenance of public order.

5. Though several grounds are raised even before this Bench, but one of the contentions is mainly on the ground that the detaining authority has passed order of detention based on the material with reference to the Crime Register No.I-19 of 2015 registered on 04.03.2015 on the file of Gayakwad Haweli Police Station, and Crime Registers No.3038 of 2015 and 3061 of 2015, both of which are registered on the file of DCB Police Station. In the order of detention, it is clearly stated that tamancha and live cartridges were seized from the possession of the petitioner in Crime Register No.3038 of 2015 registered with DCB Police Station. It is the specific allegation of the petitioner that such weapons were seized not from the petitioner. The allegation is that they were seized from the possession of accused nos.1 and 2 only. In view of such allegation, as no counter affidavit was filed, when Special Civil Application was pending, on query by this Court, the learned Government Pleader has fairly submitted that tamancha and cartridges are not seized from the appellant-accused; with reference to Crime Register No.3038 of 2015, accused nos.1 and 2 therein approached this Court and orders of detention passed against them were challenged by way of Special Civil Applications 13547 and 13442 of 2015. The learned Single Judge of this

Court while placing reliance on the judgment of the Hon^{ble} Supreme Court in the case of Pushkar Mukherjee and others v. The State of West Bengal, reported in A.I.R. 1970 852, wherein distinction was drawn between land and order and public order, it is held that the allegations made in the aforesaid crime cannot have any nexus with breach of maintenance of public order and the authorities cannot have recourse under the Act to pass order of detention in exercise of powers under section 3(2) of the PASA Act. Similarly, when accused no.2 in Crime Register No.3038 of 2015 also filed Special Civil Application No.13442 of 2015 again placing reliance on the judgment of the Hon^{ble} Supreme Court in the case of Pushkar Mukherjee and others v. The State of West Bengal (supra), this Court has held that simpliciter registration of F.I.R. itself cannot have nexus with breach of maintenance of public order and quashed the order of detention.

6. Even in this case, the authority apart from referring to other crimes also placed reliance on Crime Register No.3038 of 2015 registered on the file of DCB Police Station and came to subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. From perusal of the material on record it clearly shows that the detaining authority has passed order of detention by alleging that tamancha and live cartridges were seized were from the petitioner in Crime Register No.3038 of 2015 registered on the file of DCB Police Station, but in fact, there is no such material to show that such weapons and cartridges were seized from the petitioner. In view of the above, the specific ground raised by the petitioner that the detaining authority has taken irrelevant material into consideration and passed the order of detention, without application of mind, deserves consideration. When three crimes are referred to by the detaining authority in coming to subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order on the premise that tamancha and live cartridges were seized from the petitioner, which in fact is not so, is sufficient ground to invalidate the order of detention. As much as liberty of a person is deprived of and the petitioner is detained by way of preventive detention, such a ground itself is sufficient to invalidate the order of detention. In any event, as rightly held by the learned Single Judge in Special Civil Applications No.13547 of 2015 and 13442 of 2015, which are filed by accused nos.1 and 2 in Crime Register No.3038 of 2015 registered on the file of DCB Police Station, this Court has held that simpliciter narration of registration of various crimes by itself is not sufficient and cannot have nexus with the maintenance of public order. The authorities cannot have recourse under the Act to pass order of detention. As we are of the view that such ground itself is sufficient to set aside the order of detention, it is not necessary to consider other grounds raised by the appellant as we are of the considered view that having regard to the reasons stated above it is a clear case of non application of mind by the detaining authority to the relevant material while passing the order of detention and the same is in violation of rights guaranteed under Article 22(5) of the Constitution of India.

7. For the aforesaid reasons, this appeal deserves to be allowed. Accordingly this

Letters Patent Appeal is allowed. Judgment of the learned Single Judge dated 11.01.2016 passed in Special Civil Application No.20569 of 2015 is set aside. Consequently, order of detention dated 21.11.2015 bearing No.PCB/ DTN/ PASA/ 915/ 2015 passed by Commissioner of Police, Ahmedabad City is hereby quashed. The appellant-petitioner be set at liberty forthwith, if his custody is not required in any other crime registered against him. No order as to cost.