

(2020) 06 GUJ CK 0019
In the Gujarat High Court

Case No : R/Special Civil Application No. 7105 Of 2020

Ajitsinh @ Warner @ Bhuri Balvantsinh Rathod

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-06-2020

Acts Referred:

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(c), 3(1)

Citation : (2020) 06 GUJ CK 0019

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Mehul A Surati, Bhargav Pandya

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. By way of this petition, the petitioner - detenue has prayed to quash and set aside the order of detention dated 14.10.2019 passed by the concerned

authority in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the PASA Act')

by detaining the detenue as a 'dangerous person' as defined under Section 2(c) of the Act.

2. I have heard the arguments advanced by learned advocate Mr. Mehul Surti for the petitioner and also learned AGP Mr. Bhargav Pandya.

2.1 Mr. Surti for the petitioner has vehemently submitted that in the present case there are only two FIRs are registered against the petitioner

pertaining to offences under IPC and in one case, the petition has already been enlarged on bail. Second, limb of argument of learned advocate Mr.

Surti is that the detention order was passed after six months and therefore, there is huge delay and therefore, the order is not valid in the eyes of law

and therefore, the same deserves to be set aside. Learned advocate Mr. Surti has also distinguished the public order and law and order and how the same is applicable to the present case.

3. Per contra, learned AGP Mr, Pandya, has vehemently argued that in the present case, one of the case is under the Arms Act , wherein, the petitioner was having licensed revolver and the same is sold to another person and therefore, this is serious case and therefore, the order of detention being just and proper, may not be set aside.

4. 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 detaining authority cannot be said to be legal, valid and in accordance with 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 detainee cannot be said to be germane for the purpose of bringing the detainee 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 detainee is a person within the meaning of section 2(c) of the Act. Except general statements (two FIRs), there is no material on record which shows that the detainee 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 Honâ??ble Supreme Court in Pushker Mukherjee v. State of West Bengal, AIR 1970 SC 852, where the distinction between 'law and order' and 'public order' has been classically laid down, which is as under:

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.â??

5. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Honâ??ble

Supreme Court in the case of Dr. Ram Manohar Lohia v. State of Bihar & Others, (1966) 1 SCR 70.9 In this judgment, His Lordship Hidayatullah, J.

by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads as under:

....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law

and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does

not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to

maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival

communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public

disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must

affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under

the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(I)(b) to

prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.â?|

6. In Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and others, reported in AIR 2003 SC 97,1 the Honâ??ble Supreme

Court made the following observations:

â??The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1000/-.

Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the

locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that

the case of 'Goonda' the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a

goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a

breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of

the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to

bring the case within the purview of the Act providing for preventive detention.â??

7. In Siddharth @ Sindhu Laxmanbhai Thorat v. District Magistrate, Navsari, in Letters Patent Appeal No.1020 of 2019 dated 08.05.2019, this Court

has made following observations:

â??8. Having regard to the facts and circumstances of the case, We find that though there are powers available under section 3(1) of the Act,

ordinary law of Indian Penal Code under which FIRs are registered in four offences for which punishment is prescribed in the Indian Penal Code, is

sufficient and order of detention cannot be passed as a short cut to exhaust such remedy. Ordinarily, this Court will be loath in interfering with

subjective satisfaction of the detaining authority. While arriving at subjective satisfaction, the detaining authority is supposed to undertake objective

assessment of the material available. In this connection, we may refer to the judgment of this Court in Letters Patent appeal No.2732 of 2010, dated

28.3.2011 in the case of Aartiben W/o Nandubhai Jayantibhai Sujnani vs. Commissioner of Police & 2 others, wherein, this Court has quoted the

observations made by Apex Court in the case of Pushker Mukherjee vs. State of West Bengal, reported in AIR 1970 SC 852, wherein distinction is

drawn between public order and law and order. The Supreme Court observed in the said judgment as under:

“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.”

8. It is also fruitful to refer to the judgment of the Hon’ble Supreme Court in the case of Arun Ghosh v. State of West Bengal (1970) 1 SCC 98,

wherein, the Hon’ble Supreme Court has observed as under:

“... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community

taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals

which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon

the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man

stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may

dislike the act

9. In another case of the Hon^{ble} Supreme Court in the case of Ram Manohar Lohia v. State of Bihar & others (1966) 1 SCR 709, wherein, the

Hon^{ble} Supreme Court has observed as under:

“...Does the expression “public order” take in every kind of disorder or only some? The answer to this serves to distinguish “public order”

from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of

the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with

under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters

were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of

public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it

must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action

under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(I)(b)

to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.”

10. Further in the case of Mustakmiya Jabbarmiya Shaikh v. M. M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 126 8 observed as

under:

“8. To mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the

commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under

Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to The Law Lexicon by P.

Ramanatha Aiyar, Reprint Edn. (1987), p. 499, 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal

may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word

'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn., p. 485. It

does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore,

follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a

dangerous person"" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual

criminal. In Gopalanchari v. State of Kerala, AIR 1981 SC 674 this Court had an occasion to deal with expressions like ""bad habit"", 'habitual',

'desperate', 'dangerous', and 'hazardous'.

11. Upon above sets of discussion in fleri, considering the totality of circumstances of this case, in my humble opinion the detaining authority has failed

to substantiate that the alleged antisocial activities of the appellant detainee adversely affect or are likely to affect adversely the maintenance of public

order. The order of detention, therefore, cannot be sustained and deserves to be quashed and set aside.

12. In view of above, I am inclined to allow this petition, because simplicitor registration of FIRs 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(1) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention dated 14.10.2019 passed by the

respondent â?" detaining authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other

case.

13. Rule is made absolute accordingly.

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