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(2022) 06 GUJ CK 0096

In the Gujarat High Court

Case No : R/Special Civil Application No. 6191 Of 2022

Anil Baladevbhai Rabari (Bhatchcha) Through His Brother Vipul Baladevbhai Rabari (Bhatchcha) — APPELLANT

Vs

State Of Gujarat — RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(b), 3(2)
Gujarat Prohibition Act, 1949 — Section 65AE, 81, 98(2), 99

Citation : (2022) 06 GUJ CK 0096

Hon'ble Judges : S.H.Vora, J;Nisha M. Thakore, J

Bench : Division Bench

Advocate : Maulik M Soni, Shruti Pathak

Final Decision : Allowed

Judgement

Nisha M. Thakore, J

1. Heard learned advocates appearing for the respective parties.

2. The present petition is directed against order of detention dated 14/03/2022 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(b) of the Act.

3. 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 the offences under Sections 65-AE, 98(2), 99 and 81 of the Prohibition Act by itself cannot bring the case of the detenue within the purview of definition under section 2(b) of the Act. Further, learned advocate for the detenue submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law

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and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. 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 detenue indicate that detenue is in habit of indulging into the activity as defined under section 2(b) 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. The State has chosen not to file counter affidavit/ reply so as to disturb the action invoking provisions of the PASA Act. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

5. 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 baring 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 detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of section 2(b) 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 detenue is a person within the meaning of section 2(b) of the Act. Except general statements, there is no material on record which shows that the detenue 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 :

“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

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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."

6. In view of above, we are 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 14/03/2022 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.

7. Rule is made absolute accordingly. Direct service is permitted.

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