

(2010) 05 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 168 of 2010

Arvind Bharadwaj

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 226
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2)
Penal Code, 1860 (IPC) — Section 114, 379

Citation : (2010) 05 GUJ CK 0037

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Kamlesh Kachhava, for the Appellant; Himanshu K. Patel, learned Asst. Government Pleader for Respondent Nos. 2 - 3, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—The present petition has been filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India, challenging the legality and validity of the order of detention dated 16-11-2009, passed by the Police Commissioner, Surat City in exercise of powers u/s 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985.

2. The detenu has been branded as a "dangerous person" with a criminal bent of mind. The order of detention reveals that the detaining authority took into consideration two offences of theft of vehicles registered under Sections 379 and 114 of the Indian Penal Code vide C.R. No. I-322 of 2009 and C.R. No. I-257 of 2009, at Pandesara and Udhna Police Stations. The detaining authority came to the conclusion that the detenu was a "dangerous person" with a propensity of being engaged in illegal activities of theft and causing economic losses, therefore, he is an anti-social person and should be detained. It is further alleged in the ground of detention that the detenu threatens and beats innocent persons of the area by using deadly weapons and, therefore, he has become an

obstruction to the maintenance of public order.

3. Mr. Kamlesh Kachhavah, learned Counsel for the petitioner has submitted that the offences registered against the detenu under the Indian Penal Code cannot be said to be disturbing to the public order, and merely by registration of three offences of theft of vehicles would not give the detaining authority sufficient justification for passing the order of detention against the detenu. The learned Counsel for the petitioner has further submitted that even if it is assumed, though denied, that the detenu is engaged in any anti-social activities, the only disturbance that can be caused is to the law and order situation, and not to public order, therefore, the detention of the detenu is not necessary and the impugned order of detention deserves to be quashed and set aside.

4. On the other hand Mr. Himanshu K. Patel, learned Assistant Government Pleader has supported the order of detention and has reiterated the grounds contained in the affidavit-in-reply filed by the Commissioner of Police, in support of the said order, namely, that the detenu is likely to indulge in anti-social activities, if he is not detained.

5. I have heard the learned Counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record. In order to arrive at the subjective satisfaction that the activities of the detenu are "dangerous" to the extent of being prejudicial to the maintenance of public order, it is incumbent upon the detaining authority to rely upon cogent and credible material indicating that the said activities of the detenu directly or indirectly, are causing, or are likely to cause, harm, danger or alarm or a feeling of insecurity amongst the general public, or any section thereof, or to constitute a grave and widespread danger to the life and property of the general public. While undertaking this exercise, the detaining authority must keep in mind that there is a clear distinction between cases which fall within the category of breach of law and those falling within the category of breach of public order.

5.1 In *Ramesh Vandha Modhwadiya v. State of Gujarat* reported in 2009(3) GLH 296, a Division Bench of this Court has held, as under:

PASA Act has been enacted with a clear object to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws, who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Law is well settled that the power under the Act should be exercised with restraint and great caution.

6. In the present case, two criminal cases have been registered against the detenu under the provisions of the Indian Penal Code for committing theft of vehicles. The said offences fall under the Penal law of the country and such

activities of the detenu can, at most, be said to fall in the category of breach of law and order, but cannot be termed as constituting a breach of public order. The detenu can be tried and punished if found guilty for breach of law and order but surely, the alleged acts of the detenu do not constitute an offence that affects adversely the even tempo of life of the community, or of a nature that can be said to disturb the life and well-being of the community, either directly or indirectly.

6.1 In *The Commissioner of Police and Others Vs. Smt. C. Anita*, it has been observed in para 7 thereof that "stray and unorganized crimes of theft and assault are not matters of public order, since they do not tend to affect the even flow of public life. Infraction of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public order."

7. In view of the submissions made by the learned Counsel for the petitioner and the contents of the impugned order of detention, the present case is squarely covered by the above-mentioned decisions and, therefore, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the detenu or the likelihood of the detenu continuing the said activities, cannot be said to be a legal and valid ground for detention. The impugned order of detention, therefore, cannot be sustained.

8. For the afore stated reasons, the petition is allowed. The impugned order of detention dated 16-11-2009 passed by the Police Commissioner, Surat City against the detenu is hereby 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, accordingly. Direct service is permitted.