
(2004) 12 GUJ CK 0063
In the Gujarat High Court

Case No : Special Civil Application No. 7266 of 2004

Ashwin @ Kana Fulsing Thakor

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 226

Citation : (2004) 12 GUJ CK 0063

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : D.R. Kachhavah and Kamlesh Kachhavah, for the Appellant; H.B. Punani, AGP for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Heard Id. counsel Mr. Kamlesh Kachhavah for Id. counsel Ms. DR Kachhavah for the petitioner detenu and Id. AGP Ms. HB Punani for the State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 10.06.2004 passed by the Police Commissioner, Vadodara City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Section 2(b) of the PASA Act.

3. The order under challenge is based on the grounds considered by the detaining authority that are conveyed to the detenu. It reveals that for passing the detention order, the detaining authority has mainly considered the fact of registration of four different offences registered against the present petitioner detenu under different sections of Bombay Prohibition Act between 07.07.2002 and 08.06.2004 i.e. within a span of approximately about 2 years. Details qua all

these offences are given in a tabular form in the grounds of detention supplied to the detenu. The detaining authority has also considered certain facts stated by two witnesses in their statements recorded by the sponsoring authority.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Id. counsel Mr. Kachhavah for the petitioner, has taken this Court through the contentions raised in the petition. However, Id. counsel has focussed his arguments mainly on the ground that the fact of registration of four criminal offences punishable under the Bombay Prohibition Act itself can not be said to be bootlegging activities prejudicial to the maintenance of public order when statements recorded by the sponsoring authority do not inspire any confidence. The merits of the statements recorded by the sponsoring authority may not be tested. However, the genuineness of the statement if is found under serious cloud, then it should not be given any weightage is the backbone of the submission. Details of the offences registered against the detenu are given in tabular form in the grounds of detention which reveals that first offence is registered on 07.07.2002 and last offence is of 08.06.2004. So, in the span of about 2 years, four offences have been registered. Excepting the last two offences, there is a clear gap of more than 5 months. The offence registered at Sr. No. 3 is of 01.04.2004 and offence at Sr.No. 4 is of 08.06.2004. Two statements recorded by the Sponsoring Authority are of 07.06.2004 and 08.06.2004. According to Id. AGP Ms. Punani, the Sponsoring Authority practically was about to place the papers for obtaining appropriate preventive detention order on or about 08.06.2004, the detenu was found involved in the latter part of the very same day in similar offence punishable under the Bombay Prohibition Act i.e. last offence and order of detention is passed on 10.06.2004. It is argued by Id. counsel appearing for the detenu that these two statements are probably ante-dated. On close scrutiny, it transpires that the detenu was arrested in connection with the last offence on 08.06.2004 at 19.30 hours. So, when the alleged statement of witness No. 1 came to be recorded on 07.06.2004, the fact of fourth and last offence was not available with the sponsoring authority. So, for the purpose of first statement recorded on 07.06.2004, relevant date of last offence would be 01.04.2004. Therefore, from 01.04.2004 till 07.06.2004, there were no statements before the sponsoring authority against the present petitioner. The second statement is of 08.06.2004. So, this Court has reason to believe that genuinely if second statement was recorded on 08.06.2004, it was possible for the sponsoring authority to get both these statements verified on 08.06.2004 during the office hours i.e. prior to registration of last offence on that day at about 19.30 hours. Another column in the table in the grounds of detention clearly indicates that actually FIR qua the fourth offence is registered on 08.06.2004 at about 20.50 hours. So, to place the papers the detaining authority for obtaining appropriate orders and verification of the statements recorded at any time prior to its genuine verification, were prepared and placed for consideration. If both these statements were genuinely recorded prior to the actual registration of the fourth

offence, they were not required to be placed before the detaining authority for appropriate orders as undisputedly, the petitioner was in judicial custody till 09.06.2004. So, the say of the petitioner detenu shall have to be accepted that registration of fourth offence under the Bombay Prohibition Act by itself can not be said to be prejudicial to the maintenance of public order and the statements recorded by the sponsoring authority on 07.06.2004 and 08.06.2004 do not inspire any confidence. In support of this submission Id. counsel has relied upon the decision of this Court in Spl.C.A. No. 12231/2004 decided on 21.12.2004 in the case of Ibrahim Ramju Bayed v. State of Gujarat, wherein this Court, in similar set of facts, turned down the order of detention passed against detenu Ibrahim Ramju. Relevant observations are made in para-4 of the said decision and for the sake of convenience, the same are reproduced herein below:-

"4.Placing reliance on the decision of this Court in Spl.C.A. No. 10182/2003 decided on 26.08.2003, she has submitted that that there is a delay in passing the order of preventive detention which has made the order of detention bad and arbitrary. The detaining authority ought to have passed the order promptly. She has pointed out that the last offence registered against the petitioner is on 09.04.2004. Of course, the sponsoring authority has recorded three statements on various dates between 07.04.2004 and 09.04.2004. The statement of a third witness is recorded on 09.04.2004 i.e. on the date of commission of last offence. Interestingly, Id. counsel has pointed out that though statements of two witnesses have been allegedly recorded prior to the commission of last offence, all the three witnesses were taken for first verification before the DySP Anjar on 15.04.2004. Recording of these statements does not inspire any confidence and it gives an impression that all the three statements must have been recorded on 09.04.2004 and, therefore, those three witnesses were taken before the DySP, Anjar for verification on 15.04.2004. This Court has consistently while testing the detention order on the touchstone of promptness required in passing such order, has found the date of registration of last offence as more relevant."

5. In view of above settled legal position and facts and circumstances of the present case, ratio of the above-cited decision would help the present petitioner detenu and so, without entering into the merits of other grounds, on this ground alone, order of detention requires to be quashed and set aside.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 10.06.2004 passed by the Police Commissioner, Vadodara City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.