

(2018) 01 GUJ CK 0006
In the Gujarat High Court
Case No : 22571 of 2017

ASIF MOHAMMADBHAI SHAIKH

APPELLANT

Vs

COMMISSIONER OF POLICE & ORS.

RESPONDENT

Date of Decision : 15-01-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 379](#) - Punishment for theft
[Gujarat Prevention of Anti-Social Activities Act, 1985](#), [Section 3\(2\)](#), [Section 2\(c\)](#) - Power

Citation : (2018) 01 GUJ CK 0006

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : HEMANT B RAVAL, NIRAJ ASHAR

Judgement

1. Heard learned counsel for the parties.
2. This petition is directed against the order of detention dated 26.10.2017 passed by respondent No.1, 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 detenu as a ""dangerous person"" as defined under section 2(c) of the Act.
3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside and the ground that the registration of two offences by itself cannot bring the case of the detenu within the purview of definition of ""dangerous person under Section 2(c) of the Act. Learned counsel for the detenu further submits that the illegal activity carried out as alleged, cannot have any nexus or bearing with the maintenance of the public order and at the most it can be said to be breach of law and order. Further, except statements of

witnesses and registration of FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detenu with breach of the public order.

4. Learned counsel for the detenu, placing reliance on the decisions reported in the cases of [i] Ranubhai Bhikhabhai Bharwad [Vekaria] v. State

of Gujarat reported in 2000[3] GLR 2696, [ii] Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat reported in 2000[1] GLH

393; and [iii] Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, reported in [1995] 3 SCC 237, submitted that the case on hand is squarely

covered by the ratio laid down in the aforesaid decisions. Learned counsel for the detenu further submits that it is not possible to hold in the facts of

the present case that the activities of the detenu with reference to the criminal case/s had affected even tempo of the society, posing a threat to the

very existence of the normal and routine life of the people at large or that on the basis of the criminal case/s, the detenu had put the entire social

apparatus in disorder, making it difficult for whole system to exist as a system governed by the rule of law by disturbing the public order.

5. Learned AGP for the respondent - State supported the detention order passed by the authority and submitted that the detenu is a dangerous

person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenu, indicating that the

detenu is in habit of indulging into activities as defined under Section 2(c) of the Act and considering the facts of the case, the detaining authority

has rightly passed the order of detention and the detention order deserves to be upheld by this Court.

6. Having heard the learned counsel 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

FIRs cannot have any bearing on the public order since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient

enough to take care of the situation and that the allegations as have been levelled against the detenu cannot be said to be germane for the purpose

of bringing the detenu as a dangerous person within the meaning of section 2(c) of the Act and, unless and until the material is there to make out a

case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the

whole social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenu is a dangerous person

within the meaning of Section 2(c) of the Act. Except general statement, there is no material on record which shows that the detenu is acting in such

a manner which is dangerous to the public order. In view of the ratio laid down by the Hon"ble Supreme Court in the cases of [i] Ranubhai

Bhikhabhai Bharwad (supra), [ii] Ashokbhai Jivraj @ Jivabhai Solanki (supra) and [iii] Mustakmiya Jabbarmiya Shaikh (supra), the Court is of the

opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of public order and at the most fall under the

maintenance of ""law and order"".

7. In view of the above, I am inclined to allow this petition because simplicitor registration of FIR by itself cannot have any nexus with the breach of

maintenance of public order and the authority can take recourse under the Indian Penal Code and no other relevant or cogent material exists for

invoking powers under Section 3(2) of the Act.

8. If we peruse the citations, it becomes clear that even the Hon"ble Supreme Court has considered that detention is not permitted even in the case

of robbery and theft. The present is the case of section 379 of the Indian Penal Code. Therefore, the Court has no option but to allow the petition.

9. The petitioner has argued on merits on FIRs, referring certain judgments. However, discussion of such facts, prima facie at this stage, is not

warranted since it may otherwise prejudice the trial.

10. However, since all such order/s are quashed on technical ground, the same shall not come in the way of the detaining authority to pass an

appropriate order in future.

11. In the result, the petition is allowed. The order of detention dated 26.10.2017 passed by the respondent No.1 is quashed and set aside. The

detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute accordingly. Direct service

permitted.