

(2020) 08 GUJ CK 0310
In the Gujarat High Court

Case No : R/Special Civil Application No. 8489 Of 2020

?Bhavesh @ Malinga Manojbhai Sadhu Through His Father
Manojkumar Kuberdas Sadhu

APPELLANT

Vs

State Of Gujarat & 2 Other(s)

RESPONDENT

Date of Decision : 27-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Prevention Of Antisocial Activities Act, 1985 — Section 2(c), 3(2)
Indian Penal Code, 1860 — Section 114, 363, 366, 376(2)(n), 394, 411
Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4, 5(L), 6, 7, 8
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2020) 08 GUJ CK 0310

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : Vishal S Awtani, Utkarsh Sharma

Final Decision : Allowed

Judgement

Umesh A. Trivedi, J

[1.0.] This petition under Article 226 of the Constitution of India is directed against the order of preventive detention dated 29.02.2020 passed by the Police Commissioner, Ahmedabad city, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as 'the Act') whereby, the petitioner has been detained as a 'Dangerous Person'. The aforesaid order came to be executed upon the petitioner on the very same day.

[2.0.] Mr. Vishal Awtani, learned advocate for the petitioner submitted that to brand the petitioner as a 'Dangerous Person' under Section 2(c) of the Act, the Authority has relied on two offences registered at (i) C.R.No.I-331 of 2018 with Sardarnagar Police Station for the offence punishable under Sections 363, 366, 376(2)(n) of the IPC and under Sections 3, 4, 5(L), 6, 7 and 8 of the POCSO Act

registered on 24.11.2018 and (ii) C.R.No.I-231 of 2019 with Naroda Police Station, for the offence punishable under Sections 394, 411 and 114 of Indian Penal Code as also under Section 135(1) of the G.P. Act registered on 06.11.2019. Pursuant to the registration of these offences, the applicant came to be arrested on 26.11.2018 and released on bail by an order dated 06.12.2018 for the first offence as also in second offence the applicant came to be arrested on 17.02.2020 and came to be released on bail by an order dated 26.02.2020 as reflected from the order of detention. It is further submitted that the case at serial No.(i) relied on by the detaining authority is alleged to be committed on 24.11.2018, which is too stale a case to be considered, that too, for passing an order of preventive detention as on 29.2.2020. It is further submitted that then the detention order remains to be based on solitary offence in proximate time, that too, committed on 06.11.2019. It is further submitted that reading the FIR itself from nowhere it can be concluded that the activities of the detainee is prejudicial to the maintenance of public order. He has further submitted that at best the activities may be in breach of law and order and not the public order. He has also submitted that the registration of offences under the Indian Penal Code simpliciter will not reflect breach of public order.

[3.0.] Over and above that, the detaining authority has relied on statements of two anonymous witnesses. He has, drawing attention of the Court to the date of recording statements of anonymous witnesses, submitted that it has come to be recorded on 27.02.2020 whereas it has come to be verified by the detaining authority himself on 29.02.2020 and the petitioner came to be released on bail by an order dated 26.02.2020. The order of preventive detention has come to be made on 29.02.2020. Therefore, he has submitted that the detention order is passed on solitary offence in proximate time, and therefore, it is required to be quashed and set aside. However, he has submitted that mere registration of FIR/s for the offence under the Indian Penal Code by itself would not render the petitioner liable in absence of any credible material to conclude that his activities are prejudicial to the maintenance of public order. Referring to the impugned order, it is pointed out that the subjective satisfaction of the detaining authority is based upon the fact that the petitioner is a dangerous person as defined under Section 2(c) of the Act. It is submitted that merely because a person can be termed as dangerous person unless his activities are found to be prejudicial to the maintenance of public order, a person cannot be preventively detained. Therefore, he has submitted that subjective satisfaction recorded by the detaining authority is vitiated and therefore, order of preventive detention is required to be quashed and set aside.

[4.0.] As against that, Mr. Utkarsh Sharma, learned Assistant Government Pleader, submitted that, after considering the material placed before the detaining authority and careful examination thereof, the order of preventive detention is passed by the detaining authority, and therefore, it requires no interference. He has submitted that the detaining authority, having found the activities of the petitioner prejudicial to the maintenance of public order, has

passed the order of detention and no interference is called for, as subjective satisfaction has been validly recorded. He has further submitted that, as a matter of law, it cannot be held that the preventive detention order cannot be passed only on registered offence. If registration of offence clearly discloses breach of public order or activities of the petitioner, which is prejudicial to the maintenance of public order, a preventive detention order can be passed by the authority against the petitioner. Therefore, he has requested to dismiss the petition.

[5.0.] Having heard the learned advocates for the appearing 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 breach of public order and the penal laws are sufficient enough to take care of the situation. Except the allegations, there is no credible material on record, which shows that the petitioner is acting in any manner prejudicial to the maintenance of public order. It will be fruitful to refer to a decision of the Supreme Court in the case of Pushkar Mukherjee &Ors Vs. The State of West Bengal reported in AIR 1970 SC 852 where the distinction between 'law and order' and 'public order' has been clearly laid down:

"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."

[6.0.] Thus, the activities of the petitioner, based on registered offences, cannot be said to be in any manner prejudicial to the maintenance of public order and therefore, the subjective satisfaction arrived at by the Detaining Authority is vitiated.

[7.0.] The first offence relied on by the detaining authority came to be registered on 24.11.2018 and the petitioner came to be arrested on 26.11.2018 and released on bail vide order dated 06.12.2018 by the Competent Court, it is too stale a case to be considered or relied on by the detaining authority while

passing the order of preventive detention on 29.02.2020. Therefore, the detaining authority is left with a case at serial No.2, which is a solitary offence in proximate time, coupled with the stereotype statements of anonymous witnesses and no man of normal prudence would rely on such statements of anonymous witnesses for passing an order of preventive detention. Coming to the submission of solitary offence in proximate time where offence registered on 06.11.2019 and the detainee - petitioner could be arrested by the Police only on 17.02.2020 and ordered to be released on bail by the Competent Court on 26.02.2020. Immediately after the petitioner - detainee is ordered to be released on bail, the sponsoring authority swung into action and recorded the statements of two anonymous witnesses on 27.02.2018 and it came to be verified on 29.02.2020 i.e. the date on which the detention order came to be passed.

[8.0.] Considering the submissions made by the appearing parties, it appears that detaining authority has verified the statement of anonymous witnesses on 29.02.2020, which were recorded on 27.02.2020 and having found the fear of witnesses genuine from the petitioner has claimed the privilege for not disclosing the identity and the address of the witnesses. Co-incidentally, on the very same day, an order of detention came to be passed. Except the incident of personal violence to the said witnesses rest of the part of statement is verbatim, more or less, same. It appears that, not only the recording of statement of anonymous witnesses but the verification thereof is also a mere formality. If it is not incorrect for what is stated in it certainly it creates doubt about genuineness of the manner and method of recording and verifying the statement. Therefore, subjective satisfaction recorded by the detaining authority based on such statement of anonymous witnesses and verification thereof is vitiated as no man of a normal prudence would record the order of preventive detention based on such statements verified.

[11.0.] In view of the above, the petition succeeds and is accordingly allowed. The impugned order of detention bearing No.PCB/DTN/PASA/222/2020 passed by respondent no.2 - Police Commissioner, Ahmedabad City dated 29.02.2020, is hereby quashed and set aside and the petitioner - detainee is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute.