
(2003) 05 GUJ CK 0053
In the Gujarat High Court

Case No : Special Civil Application No. 14 of 2003

Brijesh alias Vijay Manharlal Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2)

Citation : (2003) 05 GUJ CK 0053

Hon'ble Judges : J.N. Bhatt, Acting C.J.

Bench : Single Bench

Advocate : Krishna U. Mishra and Amrish K. Pandya, for the Appellant; S.J. Dave, AGP for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, Acting C.J.

1. Challenge in this Special Civil Application is to the order dated 17.9.2002 passed under the provisions of Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act), by the Commissioner of Police, Surat City, on the ground that the petitioner is a "dangerous person" indulging in anti-social activities and thereby violating law and that there are as many as four theft cases pending against him.

2. The facts that emerge from the record manifest the following aspects unequivocally:

(i) The petitioner-detenu, came to be arrested on 14th April, 2002, for the first offence, on 15th April, 2002, for the second offence, and on 16th April, 2002, for the third offence. All these cases were related to alleged offence of theft.

(ii) Two statements of witnesses came to be recorded on 27th July, 2002. They were verified by the competent authority on 13th September, 2002.

(iii) The detention order came to be recorded on 17th September, 2002.

3. There is no doubt about the fact that there is delay of more than five months in passing the detention order. It is settled proposition of law that in detention matters, ipso-facto, while passing the order of detention, it is incumbent upon the authority as mandated by law to explain the delay satisfactorily, failing which, the detention order would assume the color of illegality. In the opinion of this Court, therefore, there is ample substance in the plea of delay. It is therefore that the detention order questioned in this writ petition under Article 226 of the Constitution of India cannot be sustained. The detention order, therefore, is not legal and valid, and deserves to be quashed. The view which this Court is inclined to take is also very much supported by the following two decisions:

a) Thakore Girishji v. District Magistrate - 2002(1) GCD 338

b) Ilesh Nandubhai Patel v. Police Commissioner, Ahmedabad City - 1997(1) GLH 381

4. In the result, the petition is allowed. The order of detention dated 17th September, 2002, is quashed and set aside. The petitioner - Brijesh alias Vijay Manharlal Solanki shall be set at liberty forthwith provided he is not required in any other case. Rule is made absolute without any order as to costs. Direct Service is permitted.