
(1995) 07 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 3958 of 1995 (Converted from Spl. Cri Application No. 368 of 1995)

Chatur Chhaganji Thakarda

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 19-07-1995

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(1), 9(2)

Citation : (1996) CriLJ 1067

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : H.P. Prajapati, for the Appellant; R.P. Solanki, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.D. Shah, J.—The petitioner detenu is ordered to be detained by District Magistrate, Sabarkantha, by his Order dated 8th, December, 1994, passed u/s 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 on his being satisfied that the detenu is a "bootlegger" as well as "dangerous person". His activities are prejudicial to the maintenance of the public order and, therefore, he was required to be detained. Along with the order of detention, grounds of detention duly formulated u/s 9(1) of the said Act are supplied to the detenu. In the grounds of detention, the detaining authority has pointed out that in the area of Bhilwas near S. T. stand of Himatnagar town, the detenu is carrying on his anti-social activities and thereafter the detaining authority has set out in the tabular form the offences alleged to have been committed by the detenu, four of the offences are relied upon for branding him as "dangerous person" while three of the offences are under the provisions of the Bombay Prohibition Act. In one of the offences dated 15th October, 1991, the detenu is already acquitted as back as 7-7-1992. One of the offence being Crime Register No. 144 of 1994, does not fall within the offences described under Chapters XVI and XVII of the I.P.C. and,

therefore, the said offences cannot be relied upon for the purpose of branding the detenu as a dangerous person. Over and above the said offences, the detaining authority has relied upon statement of five witnesses, who have desired to be anonymous and who have claimed that their identity should not be disclosed to the detenu. Their claim for privilege is accepted by the detaining authority u/s 9(2) of the said Act and their names are not disclosed to the detenu.

2. Mr. H. R. Prajapati, learned counsel appearing for the detenu has mainly assailed the order of detention on the ground that claim of privilege made by the detaining authority u/s 9(2) of the said Act vis-a-vis the disclosure of identity of witnesses is not genuinely made. He submitted that in fact witnesses have given full details of place and name of their business and they have also stated that from their shops only the detenu is either purchasing pan, beedi, tea, etc. They have also given the full address of the place of their business. All these details about the nature of their business, the name of their business, the address of their business is fully disclosed in the statements supplied to the detenu. The detenu is, therefore, in a position to know the persons, who have given the statements. In fact, the claim of privilege is falsely made because when various details about the place of business, description of business, the name in which the business is carried on etc., is disclosed to the detenu, full identity of the witnesses is disclosed to the detenu. It is, therefore, clear that in fact there was no justification for claiming privilege u/s 9(2) of the said Act. By claiming such privilege and by not supporting the further details, the detaining authority has adversely affected the right of the detenu of making effective representation. Infirmary can be found from another angle. If the detaining authority would have gone through the statements, it would have been clear to the detaining authority that in fact the witnesses have claimed the privilege about the contents of their statements while the detaining authority has supplied the full statements to the detenu. Once, the full statements are supplied, the identity of the witnesses is disclosed to the detenu. Therefore; there was no meaning in claiming privilege and in not supplying the copies of the statements of the witnesses to the detenu. The order of the detaining authority therefore suffers from total non-application of mind and the same is required to be invalidated even on that ground also.

3. In view of the aforesaid discussion, the order of detention is quashed and set aside as well as the continued detention of the detenu is declared to be null and void. The third respondent is directed to release the detenu forthwith unless his presence is required in connection with any other offence. Rule is made absolute.