
(1990) 12 GUJ CK 0039
In the Gujarat High Court

Chunigar Umraogar Gosai

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3

Citation : (1991) 2 GLR 949

Hon'ble Judges : T.U. Mehta, J; Akbar Nanjibhai Divecha, J

Bench : Division Bench

Judgement

A.N. Divecha, J.—Will it is necessary for the detaining authority to take recourse to the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (the Act of 1980 for brief) for the purpose of preventing a person from indulging into objectionable or offending activities with respect to blackmarketing and maintenance of supply of essential commodities when such person can be prevented from indulging into such activities by resorting to the ordinary law in that regard? This is one of the several questions arising before us in this Writ Petition filed by the detenu under Article 226 of the Constitution of India for challenging the legality and validity of the detention order passed by respondent No. 1 on 31st October, 1990 at Annexure "A" to this petition u/s 3 of the Act of 1980.

2. It appears that the petitioner held licence No. 29 issued to him under the relevant provisions contained in the Essential Commodities (Licence, Control and Declaration of Stock) Order, 1985, (the Order of 1985 for brief) framed u/s 3 of the Essential Commodities Act, 1955 (the Act of 1955 for brief) for dealing in kerosene. It appears that his dealings were examined by certain Civil Supply Authorities on 28th August, 1990, 22nd October, 1990 and 23rd October, 1990. It appears that several irregularities in his dealings were noticed. It cannot be gainsaid that these irregularities would constitute an offence punishable under

the Act of 1955. Respondent No. 1, however, chose to issue an order at Annexure "A" u/s 3 of the Act of 1980 ordering detention of the detenu. It appears to have been served to him on 31st October, 1990 together with the grounds for detention of the even date. A copy of the grounds is at Annexure "C" to this petition. The order of detention at Annexure "A" is under challenge in this petition on several grounds.

3. The main ground pressed into service by and on behalf of the petitioner is to the effect that the impugned order of detention at Annexure "A" suffers from the vice of non-application of mind on the part of the detaining authority inasmuch as he has not considered the less drastic remedy available for preventing detenu from indulging into his so-called objectionable or offending activities before resorting to the Act of 1980 for the purpose. It has been urged before us that Section 12AA of the Act of 1955 is capable enough to prevent such person from indulging into his objectionable or offending activities as referred to in the grounds for detention at Annexure "C" to this petition. This ground of challenge is taken by the petitioner in para 5(uuu) of the petition.

4. We find considerable force and substance in the aforesaid submission raised before us. It would be quite proper to look at the relevant provisions contained in the Act of 1955 in this connection. It has inter alia been provided therein that no person accused or suspected of the commission of an offence thereunder shall be released on bail by any Court other than a Special Court or a High Court. Again it has been enjoined on the Special Court not to release any such person on bail without giving the prosecution an opportunity to oppose application for such release on bail and on prima facie finding that, there appear reasonable grounds for believing that such person has been guilty of the offences concerned when the application for bail is opposed by and on behalf of the prosecution. It thus becomes clear that the release of a person charged with an offence punishable under the Act of 1955 is not a matter of course. Release on bail for an offence punishable under the Act of 1955 is not a rule but an exception in view of the aforesaid relevant provisions of Section 12AA of the Act of 1955. They are undoubtedly stringent. In that view of the matter, a person charged with an offence punishable under the Act of 1955 can be prevented from indulging into his objectionable or offending activities with respect to blackmarketing and maintenance of supplies of essential commodities by contesting his bail application. If the ordinary law in that regard is capable of taking care of such situation, resort to the Act of 1980 for the purpose would hardly be justifiable in absence of any cogent or convincing reasons in that regard.

5. The point in question, so far as this Court is concerned, is concluded by two unreported Division Bench rulings, to each of which one of us (J.U. Mehta, J.) was a party, in Special Criminal Application No. 1998 of 1989 decided on 16th June, 1989 and in Special Criminal Application No. 1558 of 1990 decided on 5th December, 1990. The principles of law enunciated in both the aforesaid rulings squarely applies in the instant case.

6. In the present case in the grounds for detention, the detaining authority has not considered less drastic remedy available u/s 12AA of the Act of 1955 for preventing the petitioner-detenu from carrying on his objectionable or offending activities narrated from this perspective by keeping in mind the stringent provisions for bail contained in Section 12AA of the Act of 1955. There is just a bald statement to the effect that it is not possible to prevent the petitioner-detenu from indulging into his objectionable or offending activities by taking recourse to the ordinary law applicable in that regard. In that view of the matter, there is no escape from the conclusion that the subjective satisfaction reached by respondent No. 1 for the purpose of passing the impugned order at Annexure "A" would stand vitiated. Challenge to the order of detention annexed at Annexure "A" on this score deserves to be accepted.

7. In the result, this petition is accepted. The order detention at Annexure "A" passed by respondent No. 1 on 31st October, 1990 is quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith unless required in some other case. Rule is accordingly made absolute, however, with no order as to costs.