

(2017) 07 GUJ CK 0023
In the Gujarat High Court
Case No : 9209 of 2017

DHARMENDRA@ DHAMO @MILAN RAICHANDBHAI PATEL

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Indian Penal Code, 1860, Section 114,
Section 324, Section 307, Section 504, Section 506(2) -
Gujarat Police Act, 1951, Section 135 -
Gujarat Prevention of Anti Social Activities Act, 1985, Section 3(2), Section 2(c)

Citation : (2017) 07 GUJ CK 0023

Hon'ble Judges : S.H.Vora

Bench : Single Bench

Advocate : TEJAS BAROT, ?MC BAROT, ?CHINTAN DAVE

Judgement

1. Heard learned advocates appearing for the respective parties.
2. Previously, the petitioner moved the petition under Article 226 of the Constitution of India apprehending his detention on account of offence registered vide C.R.Nos.I-118 of 2016, 124 of 2016, C.R.No.I-58 of 2002, C.R.No.II-192 of 2013, C.R.No.II-193 of 2005, C.R.No.II-54 of 2007, C.R.No.II-138 of 2008, C.R.No.II-144 of 2010, C.R.No.I-154 of 2011, C.R.No.I-205 of 2011, C.R.No.I-152 of 2013, C.R.No.II-412 of 2013, C.R.No.I-11 of 2011, C.R.No.I-80 of 2008 registered with Unjha Police Station and C.R.No.I-44 of 2012 with Visnagar police station and C.R.No.II-3239 of 2016 with Vejalpur Police Station by way of Special Civil Application No.6086 of 2017. Vide communication dated 29.6.2017, it was communicated to the office of the Government Pleader that neither any proposal is received nor any detention order has been passed on account of registration of above offence against the petitioner and accordingly, such petition was disposed of.

3. The present petition is directed against order of detention dated 24.4.2017 passed by the respondent - detaining authority 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 petitioner - detainee as defined under section 2(c) of the Act.

4. Learned advocate for the detainee submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of solitary offence under Sections 307, 324, 504, 506(2) and 114 of the Indian Penal Code and u/s 135 of the G.P. Act by itself cannot bring the case of the detainee within the purview of definition under section 2(c) of the Act. Further, learned advocate for the

detainee submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detainee with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detainee with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detainee had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

5. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detainee indicate that detainee is in habit of indulging into the activity 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 detention order deserves to be upheld by this Court.

6. Having heard learned advocates 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 FIR/s cannot have any bearing on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detainee cannot be said to be germane for the purpose of bringing the detainee within the meaning of section 2(c) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the

society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detainee is a person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that the detainee is acting in such a manner, which is dangerous to the public order. In this connection, it will be fruitful to refer to a decision of the Supreme Court in Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852], where the distinction between "law and order" and "public order" has been clearly laid down. The Court observed as follows :

"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."

7. In view of above, I am inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention No. MAG/DET/PASA/1/2017 dated 24.4.2017 passed by the respondent - detaining authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case.

8. Rule is made absolute accordingly. Direct service is permitted.