

(2015) 06 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 7662 of 2015

Dhaval Rajeshbhai Somabhai Jayasar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

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

Penal Code, 1860 (IPC) — Section 114, 379, 467

Citation : (2015) 06 GUJ CK 0004

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : A.R. Shaikh and M.S. Nandrajog, for the Appellant; Bhargav Pandya, AGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—By filing present petition through father, the detenu, under Article 226 of the Constitution of India, has prayed to quash and set aside the order of detention dated 23.04.2015 passed by the respondent No. 2-The Police Commissioner, Ahmedabad City, in exercise of power under sub-section (1) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA Act"). The detenu is branded as "dangerous person".

2. Heard the learned Advocate for the petitioner and learned AGP for the respondents. No Affidavit in reply is filed by the respondents controverting the averments made by the petitioner.

3. The petitioner came to be detained as "dangerous person" on his involvement in the offence being CR No. I-44 of 2015 for the offences under Section-379 and 114 of the Indian Penal Code, offence being CR No. I-56 of 2015 for the offences under Section-379, 467 and 114 of the Indian Penal Code and offence being CR No. I-44 of 2015 for the offences under Section-379 and 114 of the Indian Penal Code.

4. It has been submitted by the learned Counsel for the petitioner that the allegations made against the detenu are not correct; that the material collected by the detaining Authority and looking to the statements recorded by the detaining Authority, it cannot be said that the alleged activities of the petitioner would fall within the purview of "dangerous person".

5. I have gone through the grounds of detention and considered the arguments advanced by the learned Counsel for the petitioner as well as the learned A.G.P.

6. The Court is of the opinion that there is much substance in the arguments advanced by learned Counsel for the petitioner. The detaining Authority has placed reliance on the aforesaid registered offences and statements of witnesses. After recording the subjective satisfaction about the detenu being a dangerous person and with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, the impugned order of detention was passed by the detaining Authority. The impugned order, therefore, deserves to be quashed and set aside.

7. Except the general statement, there is no material on record which shows that the detenu is acting in such a manner which is dangerous to the public order. There are number of decisions of this Court as well as the Hon"ble Apex Court on the point of relying on this point. In view of the ratio laid down by the Hon"ble Supreme Court in the case of (i) The District Collector, Ananthapur and Another Vs. V. Laxmanna, AIR 2005 SC 2802 : (2005) 100 CLT 160 : (2005) CriLJ 2150 : (2005) 3 JT 309 : (2005) 3 SCC 663 ; (ii) Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, AIR 1999 SC 2197 : (1999) CriLJ 3504 : (1999) 3 Crimes 110 : (1999) 4 JT 455 : (1999) 4 SCALE 52 : (1999) 5 SCC 613 : (1999) 3 SCR 807 : (1999) 2 UJ 1191 : (1999) AIRSCW 2222 : (1999) 6 Supreme 32 ; and (iii) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, (1995) 3 Crimes 18 : (1995) 4 JT 215 : (1995) 2 SCALE 376 : (1995) 3 SCC 237 : (1995) 1 UJ 792 , the Court is of the opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of public order. In the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, (2000) 1 GLR 816 , having considered the decision of the Hon"ble Apex Court in the case of RAM MANOHAR LOHIA v. STATE OF BIHAR, reported in AIR 1996 SC 740, this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law and order" and not "public order".

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order of detention dated 23.04.2015 passed by the the Police Commissioner, Ahmedabad City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.