

(1999) 07 GUJ CK 0075

In the Gujarat High Court

Case No : Special Civil Application No. 728 of 1999

Dhirubhai Babubhai @ Dirio Bavo

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 2, 3(2), 3(4), 9(2)

Citation : (1999) 07 GUJ CK 0075

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : R.K. Mishra, for the Appellant; Punani, AGP for Respondent No. 1, 2, 3, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 2nd November, 1998, made by the District Magistrate, Bhavnagar, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act").

3. It is alleged that the petitioner is a "bootlegger" within the meaning of section 2(b) of the Act, and his activities are prejudicial to the maintenance of public order. For recording the above subjective satisfaction, the Detaining Authority has relied upon six offences registered against the petitioner for violation of prohibition law, and the statements given by two witnesses. Both the witnesses had agreed to give statements on assurance of anonymity. The Detaining Authority has claimed privilege u/s 9(2) of the Act, thereby withholding the names and other particulars of the witnesses. Upon perusal of the FIRs in the above referred criminal offences, it appears that the petitioner and one another are dealing in country liquor and are selling the country liquor in small pouches on public road. The first witness has stated that on 16th October, 1998, when the

witness was passing by a public road on a bicycle, the petitioner and his accomplice were selling liquor. The witness inadvertently hit the bicycle to the petitioner. Feeling enraged, the petitioner caught hold of the witness and beat him. The witness had to leave his bicycle and had to run for his safety. The petitioner pursued the witness with an open knife which created terror and a feeling of insecurity amongst the people in the neighbourhood and the passers-by. Till the date, the witness has not been able to recover his bicycle. The second witness has stated that on 7th October, 1998, when he was sitting in a restaurant at the cross-road, the petitioner was selling country liquor in small pouches and insisted the witness should buy one. When the witness refused to purchase the country liquor from the petitioner, he was beaten on the public road and was threatened with a knife. This created terror and a feeling of insecurity in the neighbourhood.

4. The impugned order of detention is challenged on the grounds - (a) the activities of the petitioner are prejudicial to the maintenance of law and order, however, the same can not be said to be detrimental to the maintenance of public order; (b) the Detaining Authority has wrongly withheld the names and other particulars of the witnesses thereby depriving the petitioner of his right to make an effective representation against the order of detention; and (c) the Detaining Authority has not verified the statements of the witnesses personally. In support of his arguments, Mr. Mishra has relied upon the judgment of the Supreme Court in the matter of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, , and of this court in the matter of DILIPBHAI DEVASIBHAI VAGHRI VS STATE OF GUJARAT AND OTHERS (1999 {1} GLH, 120).

5. The petition is contested by the learned APP Ms. Punani. She has submitted that that selling the country liquor and that too in a public place is itself an activity prejudicial to the maintenance of public order within the meaning of section 3(4) of the Act. She has further submitted that but for the assurance of anonymity, the witnesses were not prepared to give statements against the petitioner, and upon verification made by the Divisional Police Officer, the apprehension voiced by the witnesses was found to be genuine. The Detaining Authority has, therefore, rightly claimed privilege u/s 9(2) of the Act. Non-disclosure of names and other particulars of the witnesses, therefore, shall not vitiate the order of detention. Further, there is no statutory provision which requires the Detaining Authority to personally verify the statements made by the witnesses. All that is required is the personal satisfaction of the Detaining Authority in respect of the detenu's activities being a bootlegger/a dangerous person and of his activities being prejudicial to the maintenance of public order. In the present case also the Detaining Authority has personally perused the material before him and has recorded his subjective satisfaction on the basis of such material. The subjective satisfaction recorded by the Detaining Authority is, therefore, legal and proper. She has, therefore, relied upon the judgments of this court in the matters of POPAT MOHAN VAGHARI VS STATE OF GUJARAT & ORS

(1989 {1} GLH, 551, and CHANDULAL JETHALAL JAYSWAL VS COMMISSIONER OF POLICE VADODARA (1990 {1} GLH 148) and BHIKHABHAI THAKORBHAI PATEL VS COMMISSIONER OF POLICE (1989 (2) GLH, 420).

6. In the matter of Piyush Mehta (supra), the detenu was found to be dealing in foreign made liquor. The Hon"ble court, on perusal of the material on record found that though the detenu was a "bootlegger" within the meaning of section 2(b) of the Act, his activities were not prejudicial to the maintenance of public order. Unless the detenu's activities are found to be prejudicial to the maintenance of the public order, he can not be detained under the Act merely on the ground that he being a bootlegger. The said judgment is followed by this court in the matter of Dilipbhai Devasibhai Vaghari (supra). There can not be any dispute in respect of the aforesaid proposition. In respect of interalia, the "bootlegger", the words "prejudicial to the maintenance of public order, have been given an extended meaning under sub-section (4) of section 3 of the Act, and the explanation thereto. Considering the extended meaning given to the words "acting in any manner prejudicial to maintenance of public order", the Division Bench of this court in the matter of Popat Mohan Vaghari (supra), has held that " It becomes abundantly clear that whenever there is widespread danger to the life and property of the public, it can be said that public order was likely to be adversely affected....The consumption of country liquor by a large number of people itself is a danger to the public health. This is a matter of common sense and such reasonable inference has got to be drawn by having recourse to experience of life. For this purpose no authority or erudite research is required....As far as the cases of detention under PASA is concerned, enlarged and extended meaning of "public order" is required to be taken into consideration"....The court further observed that, "people get inebriated on public road and in the state of intoxication behave in disorderly manner. The activity of storing liquor on large scale and selling the same through liquor dens in public alone would be sufficient to adversely affect public order". This view has been confirmed by another Bench of this court in the matter of Chandulal Jethalal Jayswal (supra). The court held that " It is therefore clear that if there is any activity of bootlegger which is prejudicial to the maintenance of public order within the enlarged meaning of sub-section (4) of section 3 of the Act that would be a material on the basis of which subjective satisfaction can be arrived at". On the other ground of challenge to the order of detention, the court held that "...therefore even if the second ground as stated above is taken out of consideration on the ground of vagueness, still the order is deemed to have been made by the Detaining Authority on the remaining grounds." In the matter of Bhikhabhai Patel (supra), this court has held that all that is required by the Detaining Authority is to record his personal satisfaction in respect of the activities of the detenu and there is no statutory provision which requires the Detaining Authority to personally verify the statements recorded by the subordinate officers.

7. As stated hereinabove, in the present case, it is found that the petitioner was

dealing in country liquor and was selling the same in public. In view of the judgments of this court in the matters of Popatbhai (supra) and Chandulal (supra), it must be held that the activities of the petitioner are prejudicial to the public order within the enlarged meaning u/s 3(4) of the Act, and is sufficient to detain the petitioner under the Act. The judgment in the matter of Piyush Mehta (supra) and Dilipbhai (supra) were delivered on the facts of the said cases and shall have no applicability on the facts of the present case. In this view of the matter, the other contention raised before me falls into insignificance. However, I am of the view that considering the apprehension voiced by the concerned witnesses, the privilege claimed by the Detaining Authority u/s 9(2) of the Act can not be said to be bad or improper. No other ground is urged before me.

8. For the aforesaid reasons, the petition is dismissed. Rule is discharged.