

(1998) 11 GUJ CK 0035

In the Gujarat High Court

Case No : Spl. Civil Application No. 1769 of 1998

Dilipbhai Devsibhai Vagri

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) CriLJ 2017 : (1999) 2 GLR 324

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Subhadra G. Patel, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—This writ petition under Article 226 of the Constitution of India in the nature of writ of certiorari has prayed for quashing the order dated 22-2-1998 passed by the Commissioner of Police, Rajkot City detaining the petitioner under the Gujarat Prevention of Anti-social Activities Act, 1985 (for short PASA) and further praying for writ of habeas corpus directing immediate release of the petitioner from illegal detention.

2. Brief facts are that the Detaining Authority on 22-2-1998 passed an order of detention contained in Annexure-A and simultaneously furnished to the petitioner grounds of detention contained in Annexure-B. It is revealed from the grounds of detention that in the first place the petitioner is carrying on illegal trade in country-made liquor and has been branded as bootlegger. Four cases under the Prohibition Act were registered against him, He was released on bail in all the cases, still in spite of registration of four cases under the Prohibition Act he continued his illegal activities. The other ground is that other people of the locality became victim of the anti-social activity of the petitioner and because of the ferocious and quarrelsome nature of the petitioner no person of the locality is feeling secured and consequently no one is coming forward to disclose his

identity and to depose in public against the activities of the petitioner. The statement of three witnesses were recorded whose details have been given in the grounds of detention. On these grounds the Detaining Authority came to subjective satisfaction that the activities of the petitioner were prejudicial to maintenance of public order.

3. In the grounds of detention the Detaining Authority also took into consideration the possibility of alternative remedy being taken against the petitioner and found that alternative remedies were not effective and as such the impugned order of detention was passed.

4. This order has been challenged in this writ petition .on three grounds.

5. Learned counsel for the petitioner and learned A.G.P. were heard on those points.

6. One of the points argued has been that a representation was sent to the Chief Minister by the mother of the petitioner on 6-3-1998 and that the result of this representation has not been communicated to the petitioner and his mother so far. It was thus argued that non-consideration of this representation has rendered detention of the petitioner illegal. However, a look into para 4 of the Counter-Affidavit of Shri J.R. Rajput, Under Secretary to the Government of Gujarat in Home Department shows that the representation dated 6-3-1998 addressed to the Chief Minister was received in the office on 7-3-1998 and it was forwarded to the Home Department. 8-3-1998 was Sunday. On 9-3-1998 the file was submitted to the Deputy Secretary, who cleared it on the same day. The representation dated 6-3-1998 was considered and rejected on 10-3-1998, and a communication to this effect was sent to the detenu through Jail Authority vide letter dated 10-3-1998, This counter-affidavit has not been controverted through any rejoinder-affidavit. Consequently it has to be accepted that the representation sent by the mother of the petitioner was rejected with promptness on 10-3-1998 and on the same day the order of rejection was communicated to the petitioner. There is thus no force in the contention of the learned counsel for the petitioner that the petitioner is unaware about the fate of representation elated 6-3-1998.

7. Another attack against the impugned order is that copies of bail application and the bail order in criminal case CR No. 30/97 were not supplied to the petitioner. Hence it has prevented the petitioner from making effective representation in his defence. On the factual side in para 6 of the Counter-Affidavit of Shri Sudhir Sinha, Commissioner of Police, Rajkot City, it is deposed that copies of bail application and bail order could not be supplied to the detenu despite sincere efforts inasmuch as they were not available in the Court of Chief Judicial Magistrate concerned. In other three offences mentioned in the grounds of detention copies of bail order and bail application were supplied. This paragraph of counter-affidavit has also not been controverted through rejoinder-affidavit. If the record of bail application in CR No. 30 of 1997 is not available in

the Court concerned their copies could not be supplied to the petitioner. It was, however, argued that non-supply of these documents has caused material prejudice to the petitioner and reference has been made to the case of M. Ahamedkutty Vs. Union of India (UOI) and Another, . On facts this case is distinguishable. The obligation on the detaining authority to supply copies of bail application and the bail order is placed only when the detaining authority placed reliance upon those documents and mentioned the same as grounds for detention in the grounds supplied by him. If these bail applications and the bail orders were not the grounds of detention there was no obligation on the part of the detaining authority to supply its copies. Para 8 of the grounds of detention was read over before me and it was urged by the learned counsel for the petitioner that the detaining authority has relied upon the bail order and the copy of bail application. I am unable to accept this contention. What is mentioned in para 8 of the grounds of detention is for the consideration by the detaining authority of alternative remedy which was found to be ineffective and the authority found preventive detention to be the only effective remedy. A bare recital in para 8 that the detenu was released on bail in all the four cases does not mean that this was a ground for detention of the detenu. It was actually on the part of the detaining authority, to clarify that he has entered into exercise of considering whether the alternative remedy was effective or not and whether the order of preventive detention was the only effective remedy. Consequently non-supply of copies of bail order and bail application has not invalidated the order of detention.

8. The last ground has been that the grounds of detention do not make out a case that the so-called prejudicial activities of the petitioner have prevented maintenance of public order. In support of her contention the learned Advocate relied upon pronouncement of the Supreme Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, . Learned A.G.P., on the other hand, relied upon the pronouncement of this Court in the case of Gopal Gangaram Nepali Vs. Commissioner of Police and Others, and has contended that the activities of the petitioner in the case under consideration were almost similar to the activities of the petitioner in Gopal Gangaram Nepali Vs. Commissioner of Police and Others, and as such detention order is valid.

9. In order to appreciate this contention the grounds of detention have to be taken into consideration. It emerges from the grounds of detention that four cases under the Prohibition Act were registered against the petitioner and despite that he was continuously indulging in such activity. The second ground is that the witnesses of the locality as well as the residents of the locality were panicky on account of ferocious and quarrelsome nature of the petitioner who is in the habit of extending threat to them and nobody; dares to speak in public or lodge complaint against the petitioner. The statements of three witnesses were referred to in the grounds of detention.

10. Mere commission. of an offence or offences under the Bombay Prohibition Act

cannot be said to be an act detrimental to public order or acts on account of which public order was disturbed or is likely to be disturbed

11. So far as the statements of the three witnesses are concerned they have stated about three different incidents of different nature. Before advertng to these incidents it has to be kept in mind that the concept of public order and disturbance of law and order is not identical. Activity of the detenu may cause law and order problem for the executive as well as the police, but unless such activity amounts to disturbance of public order preventive detention cannot be sustained. Even in Piyush Kantilal Mehta's case (1989 Cri LJ 956) (supra) the Apex Court held that even if petitioner is said to be bootlegger indulging in illegal activity of trading in Wine (English Wine) that by itself would not amount to disturbance of public order. The disturbance of public order is said to be caused when the activity of the petitioner actually disturbs even tempo of the life of the locality or creates panic in the locality or disturbs peace in the locality. If in this light the three incidents deposed by the three witnesses are examined it has to be seen what is the net outcome of such analysis.

12. One witness stated in confidence with respect to incident dated 26-1-1998. He gave statement on 18-2-1998 i.e. about four days before the detention order was passed. The gist of the statement of the witness is that he saw the petitioner from the window putting a heavy can in the cavity beneath the otta and told the petitioner to put the said can at any other place. Upon this the petitioner was excited and he beat the witness. The witness shouted. The petitioner then took out a knife and threatened to kill him. At the same time the petitioner ran towards the people collected at the spot with open knife. This was actually an incident between the "petitioner and the witness. It is not mentioned in the gist of the statement that actually the can was filled with country-made liquor. The statement seems to be imaginary. It is not disclosed that any injury was inflicted to the witness by the petitioner. It is also not stated that alarm was raised by the petitioner upon which the crowd collected. Consequently on imaginary ground of collection of crowd on such incident it cannot be inferred that by prejudicial activity of the petitioner public order was disturbed. Even if it is believed that the wife of the petitioner tendered apology (for) to the petitioner it does not make out a case of disturbance of public order.

13. The second incident relates to 15-2-1998 i.e. a week before detention order was passed. The statement of witness was recorded on 19-2-1998. The statement of this witness also does not. indicate that the activity of the petitioner on 15-2-1998 caused disturbance of public order. Even if it is believed that on presumption that the witness was police informer, the petitioner beat him with kicks and lists, it cannot be said that such action between the two individuals resulted in disturbance of public order.

14. The third incident is dated 7-12- 1998(sic). Third witness was examined on 19-2-1998 i.e. three days before passing of detention order. His statement also does not lead to inference that by the said activity of the petitioner public order

of the locality was jeopardised. The narration of the incident is that the petitioner asked the witness to keep a heavy bag on his rickshaw. The rickshaw driver refused to do so and upon such refusal the petitioner beat the witness. The petitioner took out knife and threatened the witness to kill him. The witness raised shouts and on shouts people collected at the spot. This incident is nothing, hut individual incident. It is not mentioned that any illegal article was being carried in the bag which the rickshaw puller refused to carry. In the statement of the witnesses it is mentioned that the petitioner ran towards crowd with open knife giving threats to the members of the crowd,

15. As such the three incidents narrated in the grounds of detention are quite insufficient to conclude that it was a case of disturbance of public order.

16. So far as the case of Gopal Gangaram Nepali Vs. Commissioner of Police and Others, is concerned, here the facts were alarming and are distinguishable. The substance of the grounds of detention in Gopal Gangaram Nepali Vs. Commissioner of Police and Others, were firstly that the detenu was a bootlegger. The second was that he gave threats to the witnesses. The third which was more alarming was that he tried to run over the police party with his vehicle on signal being given by the police party to stop and gave threats to the public that, he will kill anyone who would come in his way. Further he continued to drive his vehicle with reckless speed and dashed against pedestrians causing injuries to them. These were certainly activities prejudicial to the maintenance of public order. If a person who tries to run over police party with his speeding vehicle it can safely be said that he has no respect for law and order as well as for public order and panic is likely to be created in the mind of the public that if the police party is not safe how the safety of public can be ensured.

On the facts of the case before me the last ground of attack is acceptable.

17. In the. result the two grounds of attack are not acceptable. However, the third ground of challenge, viz. the activity of the petitioner was not prejudicial to the public order can safely be accepted for the reasons given in the foregoing portion of this judgment.

The detention order, therefore, becomes illegal. The petition, therefore, succeeds and is hereby allowed. The impugned order of detention (Annexure-A) dated 22-2-1998 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other case.