
(2016) 04 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 3106 of 2016

Fulchand

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Constitution of India, 1950 — Article 22(5), Article 226

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

Citation : (2016) 04 GUJ CK 0061

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : M.R. Prajapati, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

V.M. Pancholi, J.—1. This petition under Article 226 of the Constitution of India is directed against the order of detention dated 11.01.2016 passed by the respondent 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 detenu as a "dangerous person" as defined under Section 2(c) of the Act.

2. Perused the petition, materials supplied to the detenu, detention order and heard learned advocate Mr. Prajapati for the petitioner and learned A.G.P. Mr. Joshi for the respondent-State.

3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside and the ground that three offences registered against the detenu being I-C.R. No. 381 of 2013 with Ellisbridge Police Station, I-C.R. No. 245 of 2015 with Vastrapur Police Station and I-C.R. No. 4 of 2016 with Vastrapur Police Station by itself cannot bring the case of the detenu within the purview of definition "dangerous person" under Section 2(c) of the Act. Learned advocate for the detenu further submits

that illegal activity carried out as alleged cannot have any nexus or bearing with maintenance of public order and at the most it can be said to be breach of law and order. Further, except registration of FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detenu with breach of the public order. Learned advocate Mr. Prajapati has placed reliance upon the decision rendered by the Hon''ble Supreme Court in the case of Abdul Sathar Ibrahim Manik v. Union of India and Others, reported in , AIR 1991 SC 2261 and submitted that the respondent detaining authority has relied upon the copy of the bail application and the order passed by the concerned Court releasing the detenu on bail. However, a complete copy of the order of bail has not been supplied to the petitioner detenu and therefore the detaining authority without looking into the complete order of bail has passed the order of detention and thereby the order of detention is vitiated. In the aforesaid decision, the Hon''ble Supreme Court has held in para 12 as under:

"12..... Having regard to the various above-cited decisions on the points often raised we find it appropriate to set down our conclusions as under:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application or the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an effective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to

supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

4. Section 2(c) of the Act defines the term "dangerous person" as under:--

"2(c). "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code (GLV of 1860) or any of the offences punishable under Chapter V of the Arms Act, 1959 (54 of 1959)."

5. Learned advocate for the detenu, placing reliance on the decisions reported in the cases of (i) Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat reported in , 2000(3) GLR 2696; (ii) Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat reported in , 2000(1) GLH 393; and (iii) Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, reported in , (1995)3 SCC 237, submitted that the case on hand is squarely covered by the ratio laid down in the aforesaid decisions. Learned counsel for the detenu further submits that it is not possible to hold in the facts of the present case that the activities of the detenu with reference to the criminal case/s had affected even tempo of the society, posing a threat to the very existence of the normal and routine life of the people at large or that on the basis of the criminal cases, the detenu had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by the rule of law by disturbing public order.

6. Learned AGP for the respondent-State supported the detention order passed by the authority and submitted that the detenu is a "dangerous person" and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenu, indicating that the detenu is in habit of indulging into activities 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 the detention order deserves to be upheld by this Court. For such submission, the learned A.G.P. took me through the grounds upon which the detaining authority satisfied to detain the petitioner.

7. The order of detention is passed on the basis of what has come to be known as the subjective satisfaction of the detaining authority such subjective satisfaction has to be arrived at on two points. Firstly, on the veracity of facts imputed to the person to be detained and secondly, on the prognostication of the

detaining authority that the person concerned is likely to indulge again in the same kind of notorious activities. Whereas, normal laws are primarily concerned with the act of commission of the offence, the detention laws are concerned with character of the person who has committed or is likely to commit an offence. The detaining authority has, therefore, to be satisfied that the person sought to be detained is of such a type that he will continue to violate the laws of the land if he is not preventively detained. So, the commission of infraction of law, not done in an organized or systematic manner, may not be sufficient for the detaining authority to justifiably come to the conclusion that there is no alternate but to preventively detain the petitioner.

8. Having heard learned counsel 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 since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue as a "dangerous person" within the meaning of Section 2(c) of the Act and, unless and until the material is there to make out a case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the whole social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a dangerous person within the meaning of Section 2(c) of the Act. Except general statement, there is no material on record which shows that the detenue is acting in such a manner which is dangerous to the public order. In view of the ratio laid down by the Hon'ble Supreme Court in the cases of (i) Ranubhai Bhikhabhai Bharwad (Vekaria)(supra); (ii) Ashokbhai Jivraj @Jivabhai Solanki (supra); and (iii) Mustakmiya Jabbarmiya Shaikh (supra), the Court is of the opinion that the activities of the detenue cannot be said to be dangerous to the maintenance of public order and at the most fall under the maintenance of "law and order." In this connection, it will be fruitful to refer to a decision of the Supreme Court in Pushker Mukherjee v. 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."

9. No doubt, neither the possibility of launching of a criminal proceedings nor pendency of any criminal proceedings is an absolute bar to an order of preventive detention. But, failure of the detaining authority to consider the possibility of either launching or pendency of criminal proceedings may, in the circumstances of a case, lead to the conclusions that the detaining authority has not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Since there is an allegation that the order of detention is issued in a mechanical manner without keeping in mind whether it was necessary to make such an order when an ordinary criminal proceedings could well serve the purpose. The detaining authority must satisfy the court that the question too was borne in mind before the order of detention was made. In the case on hand, the detaining authority failed to satisfy the court that the detaining authority so bore the question in mind and, therefore, the court is justified in drawing the inference that there was no application of mind by detaining authority to the vital question whether it was necessary to preventively detain the detenu. It is also fruitful to refer to the decision of the Hon'ble Apex Court rendered in the case of *Rekha v. State of Tamil Nadu through Secretary to Government* and another reported in , (2011)5 SCC 244 wherein, it is observed by the Hon'ble Apex Court that if a person is liable to be tried, or is actually being tried for a criminal offence but the ordinary criminal law will not be able to deal with the situation, then and only then, preventive detention be taken recourse to.

10. As a result of hearing and perusal of the record, it appears that the only material that was available with the detaining authority was the offences registered against the detenu and on that basis, it cannot be said that the activity of the detenu has become a threat to the maintenance of "public order". Mere involvement of the detenu in such activity may not amount to dangerous activity by the detenu and mere mention of them, unless supported by any evidence, cannot be said to be material germane for the purpose of arriving at the subjective satisfaction that the activity of the detenu is prejudicial to the maintenance of "public order". For the sake of repetition, the commission of offence does not exhibit or disclose that the petitioner is doing infraction of law in an organized or systematic manner so as to come to the conclusion that there is no alternate but to preventively detain the petitioner.

11. In view of the 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 can take recourse under the Indian Penal Code and no other relevant or cogent material exists for invoking powers under Section 3(2) of the Act.

12. In the result, this Special Civil Application is allowed. The impugned order of detention dated 11.01.2016 passed by the respondent authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.