

(2011) 02 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No. 14587 of 2010

Haresh @ Harish

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66B

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(1)

Citation : (2011) 02 GUJ CK 0048

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : A.R. Shaikh, for the Appellant; M.S. Sachi Mathur, AGP for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

Akil Kureshi, J.—Petitioner is ordered to be kept on preventive detention by an order dated 24.9.2010 passed by the Police Commissioner, Surat, in exercise of powers u/s 3(1) of Prevention of Antisocial Activities Act (for short "PASA").

2. Grounds of detention would indicate that against the Petitioner, there is an isolated case of offence u/s 66B, etc. for offences punishable under Bombay Prohibition Act registered on 19.8.2010. It is further recorded that to prevent the Petitioner from committing similar antisocial activities, it is necessary to place him under preventive detention.

3. Counsel for the Petitioner, however, submitted that only for involvement in one case of prohibition, the Petitioner cannot be said to be antisocial element. His detention is, therefore, illegal. Reliance was placed in the case of Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat and Ors. 2001 (1) GLH 393 wherein Division Bench of the High Court made following observations.

So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the

grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Dr. Ram Manohar Lohia Vs. State of Bihar and Others, and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs

4. Counsel also relied on unreported decision of learned single Judge dated 25.10.2005 passed in Special Civil Application No. 18901 of 2005 wherein, it was held and observed as under:

6. In the present case the reliance is only placed upon the solitary offence, without having any basis and dehors the relevant and credible materials to arrive at a conclusion about disturbance of public order by the prejudicial activities of the detenu and therefore, powers exercised by the authority while passing the order of detention is the result of non-application and the order of detention requires to be quashed and set aside.

7. For the reasons recorded hereinabove, the order of detention dated 22.06.2005 passed by the Respondent No. 2, is hereby quashed and set aside. The detenu Jyotiben Wd/o. Rameshbhai Morarbhai Koli Patel is ordered to be set at liberty forthwith if she is not required further in any other case by any other authority.

5. Learned AGP opposed the petition contending that order of detention was based on subjective satisfaction of the authority.

6. From the record, I find that admittedly, the Petitioner was involved in only one case of selling illicit liquor. Except for recording of said FIR, no other cases are registered against the Petitioner. He is not found to be involved in any other criminal activities so far. Judgments referred above would therefore cover his case.

7. In view of the above, I am of the opinion that order of detention is bad in law. Petitioner is ordered to be released forthwith if not required in any other criminal case. Petition is allowed. Rule made absolute accordingly.