

(2020) 06 GUJ CK 0118

In the Gujarat High Court

Case No : R/Special Civil Application No. 668 Of 2020

Harsh Narsotambhai Vaghela

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 32

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(c), 3, 3(2)

Indian Penal Code, 1860 — Section 114, 324, 392

Citation : (2020) 06 GUJ CK 0118

Hon'ble Judges : A.C. Rao, J

Bench : Single Bench

Advocate : Rinkuben J Patel, Hardik Mehta

Final Decision : Allowed

Judgement

A.C. Rao, J

1. Heard learned advocates appearing for the respective parties.

2. The present petition is directed against order of detention dated 27.09.2019 passed by the respondent "detaining 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 petitioner "detenue as defined under section 2(c) of the Act.

2.1. The case of the petitioner is that on account of the complaints which are narrated in the impugned order, the petitioner has been detained vide

order dated 27.09.2019 the learned advocate Ms. R.J. Patel has appeared for the petitioner and learned AGP, Mr. Hardik Mehta, has represented the

respondent "State.

3. Learned advocate for the detenue submits that the order of detention

impugned in this petition deserves to be quashed and set aside on the ground of registration of two offences under Sections 392 and 114 of the Indian Penal Code by itself cannot bring the case of the detainee within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detainee submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detainee with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detainee with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detainee had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detainee indicate that detainee is in habit of indulging into the activity 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 detention order deserves to be upheld by this Court.

5. Having heard learned advocates 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 as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detainee cannot be said to be germane for the purpose of bringing the detainee within the meaning of section 2(c) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as

to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said

that the detenu is a person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that

the detenu is acting in such a manner, which is dangerous to the public order.

6. Further, The essential concept of the preventive detention is that the detention of a person is not to punish him for something he has done but to

prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in

a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already

done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order

under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove on proof of his guilt and the

standard is proof beyond the reasonable doubt whereas in the preventive detention a man is prevented from doing something which it is necessary for

reasons mentioned in section 3 of the Act to prevent.

7. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power

exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even

if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before

or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even

acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution.

8. The Supreme Court on several occasions examined the concepts of "law and order" and "public Order". Immediately after the Constitution came

into force, a Constitution Bench of the Supreme Court in the case of Brij Bhushan & Another v. The State of Delhi, (1950) SCR 605 dealt with a case

pertaining to public order. The court observed that "public order" may well be paraphrased in the context as "public tranquility".

8.1 Another celebrated Constitution Bench judgment of the Supreme Court is in

the case of *Romesh Thappar v. The State of Madras*, (1950) SCR

594. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called *Cross Roads* printed and published in Bombay

was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in the Supreme Court of India

by filing a writ petition under Article 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquility

and to create disturbance of public order and tranquility.

The Supreme Court observed:-

... 'Public order' is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as

a result of internal regulations Page 6 of 10 Downloaded on : Fri Jun 12 12:40:10 IST 2020 C/SCA/11482/2018 JUDGMENT enforced by the

Government which they have established it must be taken that 'public safety' is used as a part of the wider concept of public order

9. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Supreme Court in the

case of *Dr. Ram Manohar Lohia v. State of Bihar & Others*, (1966) 1 SCR 70.9 In this judgment, His Lordship Hidayatullah, J. by giving various

illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:

....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law

and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does

not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to

maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival

communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public

disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must

affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under

the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(I)(b) to

prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those

affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three

concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle

represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but

not security of the State....

10. In Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and others, reported in AIR 2003 SC 97,1 the Supreme Court made the

following observations :

“The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1000/-.

Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the

locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that

the case of 'Goonda' the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a

goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a

breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of

the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to

bring the case within the purview of the Act providing for preventive detention.”

11. Thus, from the various decisions of the Supreme Court referred to above, it could easily be said that the detaining authority has failed to

substantiate that the alleged antisocial activities of the detenu affect adversely or

are likely to affect adversely the maintenance of public order. It is true that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior. Just because one case has been registered against the detenu of the offence under Section 324 of the Indian Penal Code and two in-camera statements have been recorded of the witnesses whose identity has not been disclosed, by itself do not have any bearing on the maintenance of the public order. The detenu may be punished for the offence which has been registered against him but, surely, the acts constituting the offence cannot be said to have affected the even tempo of the life of the community.

12. Thus, in the overall view of the matter, I am convinced that the detention of the petitioner is not in accordance with law and the order of detention deserves to be quashed and set aside.

13. In view of 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 cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention

No.PCB/DTN/PASA/1153/2019 dated 27.09.2019 passed by the respondent â?" detaining authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case.

14. Rule is made absolute accordingly. Direct service is permitted.