

(2004) 12 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 7453 of 2004

Ishwar Dharsing Thakor

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5), 226

Citation : (2004) 12 GUJ CK 0043

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : H.R. Prajapati and M.R. Prajapati, for the Appellant; H.B. Punani, Id. AGP for Respondent Nos. 1-3, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Heard Mr. M.R. Prajapati, learned counsel appearing for the petitioner and Ms. H.B. Punani, Id. AGP, appearing on behalf of the respondents.

2. The present petition is filed under Article 226 r/w. Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 21st June, 2004, passed by the respondent No. 2-Commissioner of Police, Ahmedabad City, under the purported exercise of powers vested with the Detaining Authority u/s 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

3. The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in two criminal cases registered under the Bombay Prohibition Act. While exercising powers u/s 3(2) of the Act, the Detaining Authority has detained the petitioner branding the petitioner as a "bootlegger" mainly on the fact that he was found involved in two different offences punishable under the Bombay Prohibition Act registered on 1st September, 2003 and 25th February, 2004, with Meghaninagar Police Station. So after five months of the registration of the last offence, the impugned order has

been passed against the petitioner by the Detaining Authority. No other cogent material was there before the authority i.e. evidence in the nature of statements to be recorded by the sponsoring authority in respect of bootlegging activities of the petitioner.

4. The order of detention is assailed by the present petitioner on various grounds mentioned in the memo of the petition. However, Mr. Prajapati has focused his arguments mainly on the two grounds. The first point pressed into service by Mr. Prajapati is that there is unreasonable delay caused by the Detaining Authority in passing the order of detention, which goes to the root of the validity of the order and such an order cannot sustain and such an order should normally be passed very promptly, if the petitioner-detenu is required to be prevented from indulging in any activities prejudicial to the maintenance of public order. Mr. Prajapati has rightly placed reliance on the decision of this Court (Coram : J.R. Vora, J) dated 26th August, 2003, in Special Civil Application No. 10182 of 2003 in the case of Maksud Yasin Kayamkhyani v. State of Gujarat. I would like to quote relevant observations of this Court (para:6), which is as under :

"6. If the facts of this case is perused and factual data is examined, it is clear that if the case is examined from the crime wise, the activities of the detenu came to light right from 25.4.2002, the dates on which the crimes allegedly committed by the detenu, registered or unreported, necessarily denotes time gap not only in respect of repeating dangerous behaviour by the detenu but that gap is apparent on the part of the authority to discover such dangerous behaviour of the detenu. An offence came to be registered i.e. third one on 17.7.2002, unreported incident as narrated by the witness occurred on 22.9.2003, again a crime for theft came to be registered against the detenu on 24.9.2002 and again on 10.10.2002 if the incident as narrated by the second witness occurred, then unexplained delay on the part of the authority crystally emerges in discovering the dangerous behaviour of the detenu because the statements of the witnesses came to be recorded on 24.10.2002 and 28.10.2002. Again, the statements came to be verified only on 26.11.2002 by the detaining authority and the order came to be passed on 29.11.2002. The detenu has raised the plea that there is an unexplained delay in passing the order, as aforesaid. There is ample substance in the said plea. It is found that the credible chain including ground of criminal and dangerous activity of the detenu and the purpose of detention is snapped by a long gap of more than one month in absence of the detention order. The facts of the case are also covered by decision of this Court in the matter of Thakore Girishji and Gidhaji Jenaji v. District Magistrate and Ors., reported in 2002(1) GCD 338 and in the matter of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City, reported in 1997 (1) GLH 381, the detention order therefore cannot be sustained and deserves to be quashed on this ground alone."

5. In the present case, the date of registration of the second offence is 25th February, 2004 and the petitioner was arrested in the said offence on 31st

March, 2004; and the impugned order was passed on 21st June, 2004. Undisputedly, the petitioner was enlarged on bail by the competent Court on 1st April, 2004. So the period between 2nd April, 2004 and 21st June, 2004 remains unexplained as to why the order of preventive detention was not passed.

6. It is also rightly argued that registration of two different criminal offences at the interval of five months punishable under the Bombay Prohibition Act is an act prejudicial to the maintenance of law and order; and not public order. In support of this submission, Mr.Prajapati has placed reliance on the ratio of the decision of this Court (Coram : A.L. Dave, J) dated 14th February, 2002, in the case of Babuji Jaksiji Thakore v. State of Gujarat while dealing with Special Civil Application No. 143 of 2002 and also decision of this Court (Coram : C.K. Buch, J) dated 21st June, 2002, in the case of Mohammed Rafik Abdul Rehman Menon v. Commissioner of Police, Ahmedabad City, while dealing with Special Civil Application No. 2391 of 2002. In the same way, on similar count this Court (Coram : N.G. Nandi, J) has allowed Special Civil Application No. 16542 of 2003 in the case of Gunvantbhai @ Chiga Ranchhod Halpati v. State of Gujarat on 26th February, 2004.

7. So accepting the ratio of the above cited decisions, the Court is accepting the say of the petitioner that the authority has committed grave error in recording subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of public order. Obviously, therefore, it was erroneous to exercise privilege vested with the authority under the Act. So without entering into the merits of other grounds mentioned in the memo of the petition, except those which are discussed hereinabove, the order of detention is required to be quashed and set aside.

8. In view of the above, the present petition is hereby allowed. The order of detention dated 21st June, 2004, passed by the respondent No. 2 herein is hereby quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required for any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.