

(1995) 07 GUJ CK 0055

In the Gujarat High Court

Case No : Special Civil Application No. 4992 of 1995

Jakirbhai Rahimbhai Nagori

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 19-07-1995

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(1), 9(1), 9(2)

Citation : (1996) CriLJ 1453 : (1996) 1 GLR 80

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : Satish R. Patel, for the Appellant; R.P. Solani, AGP, for the Respondent

Final Decision : Allowed

Judgement

S.D. Shah, J.—The petitioner detenu has by this petition challenged the legality and validity of the order of detention dated 26th October, 1994, passed by the District Magistrate, Mehsana, u/s 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985, on his being satisfied that the detenu was a "bootlegger", whose anti-social activities were prejudicial to the maintenance of public order and, therefore, he was required to be detained. In the grounds of detention of even date and duly formulated and supplied u/s 9(1) of the said Act, the detaining authority has set out as many as seven offences punishable under the Bombay Prohibition Act, in which the detenu is involved and it has also relied upon the statements of witnesses who have deposed about the anti-social activities of the detenu and who have desired to be anonymous. Their identify is not disclosed to the detenu by claiming privilege u/s 9(2) of the said Act.

2. Mr. Satish R. Patel, learned counsel appearing for the detenu has assailed the genuineness of the claim of privilege made by the detaining authority u/s 9(2) of the said Act vis-a-vis the statements of witnesses. He has submitted that in fact the witnesses in their statements have said that their addresses, names, place of business, etc. should not be disclosed to the detenu as they were apprehending

danger to their life and property. Such apprehension or fear expressed by the witnesses in their statements was before the authority, who has recorded the statements. The detaining authority has not recorded the statements. The detaining authority itself was required to be subjectively satisfied that the claim of privilege which it was seeking to make was justified. Therefore, it has directed the Supdt. of Police to satisfy as to whether the fear or apprehension expressed by the witnesses was genuine or not and the Superintendent of Police was in his turn required to call such witnesses and to verify and to record as to whether apprehension or fear expressed by such witnesses in their statements was genuine or not. Unfortunately, below every statement, the Superintendent of Police has written one word namely "verified" and based on such endorsement made by Superintendent of Police, the detaining authority has claimed privilege. It is submitted before this Court that such an exercise is merely an eyewash and there is no genuine independent material before the detaining authority to claim the privilege. In this connection, reliance is placed upon the decision of the Division Bench of this Court in the case of Koli Ashwin v. State of Gujarat in Spl. Criminal Application No. 1812 of 1993 dated 12th September, 1994, wherein N.J. Pandya, J. speaking for the Division Bench has made following pertinent observations :

"However, as is well established, for exercising the power u/s 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified"" used by the Dy. S.P., who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.

About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority."

3. In view of the aforesaid observations made by the Division Bench and the position of the law established by the Division Bench of this Court, it shall have to be accepted that the claim of privilege made by the detaining authority u/s 9(2) of the Act was not genuine and to the aforesaid extent the detenu was denied the opportunity of making effective representation by making and supplying to him the other details of the statements of witnesses. The continued detention of the detenu is, therefore, null and void. In the result, the petition succeeds. The third respondent is directed to release the detenu forthwith unless his presence is required in connection with any other offence. Rule is made absolute.