

(2011) 02 GUJ CK 0055

In the Gujarat High Court

Case No : Special Civil Application No. 14672 of 2010

Jayanti Babubhai Thakor

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65E, 66(1)B

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

Citation : (2011) 02 GUJ CK 0055

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : H.R. Prajapati, for the Appellant; Vaijaynti Pathak, Asst. Government Pleader, for the Respondent

Judgement

Akil Kureshi, J.—Petitioner is ordered to be kept under preventive detention, by an order dated 21.10.2010, passed by the Police Commissioner, Ahmedabad, in exercise of powers u/s 3(1) of Prevention of Antisocial Activities Act (for short "PASA").

2. Grounds of detention indicate that against the Petitioner, there is a solitary case, for the offences punishable under Sections-66(1)(b), 65E, etc. of the Bombay Prohibition Act, is registered on 18.09.2010. It is further recorded that to prevent the Petitioner from indulging in similar, antisocial activities, it is necessary to place him under preventive detention.

3. Learned 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, in this regard, was placed on a decision in the case of Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat and Ors. reported in 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. Learned Counsel also relied on an 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 prohibition. Except for recording of said FIR, no other case is 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 the order of detention is bad in law. The order of detention dated 21.10.2010, passed by the Police Commissioner, Ahmedabad, is QUASHED. Petitioner is ordered to be released FORTHWITH, if NOT REQUIRED in connection with any other criminal case. Rule is made absolute, accordingly. Direct service is permitted.