

(2022) 09 GUJ CK 0028
In the Gujarat High Court

Case No : R/Special Civil Application No. 9370, 9397, 9642, 10041, 10145 Of 2022

Jigneshbhai Vasantlal Shah Through Pritiben Jigneshbhai Shah APPELLANT
Vs

District Magistrate, Surat RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 22, 22(5), 226
Fertilizer (Control) Order, 1985 — Section 25(1)
Essential Commodities Act, 1955 — Section 3, 7
Indian Penal Code, 1860 — Section 114, 406, 409, 48777

Citation : (2022) 09 GUJ CK 0028

Hon'ble Judges : S.H.Vora, J;Rajendra M. Sareen, J

Bench : Division Bench

Advocate : IH Syed, Kuldeep K Adesara, Km Parikh, Aayan Pate, Harsheel D Shukla, Matafer R Pande, Aayan Patel, Harsheel D Shukla, Salim Saiyed, Aayan Patel, Harsheel D Shukla

Final Decision : Allowed

Judgement

S.H.Vora, J

1. Since the petitions are arising out of same set of facts and materials replied upon by the respondent and provided to the petitioners, with the consent of learned advocates for the respective parties, the petitions are disposed of by this common order.

2. By way of present petitions under Article 226 of the Constitution of India, the petitioners challenge order of detention dated 26.04.2022 passed by respondent no.1 under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act (for short 'the Act') as being unconstitutional, violative of Article 21, 22 of Constitution of India and suffering from non existing grounds based upon in-genuine satisfaction of respondent no.1, contrary to principles of natural justice and fair play in action and

therefore, same is null and void.

3. Brief facts leading to present group petitions can be stated thus :-

3.1 On 14.12.2021, raid was conducted by Agriculture Officer at warehouse situated at Mahalakshi Industrial Estate, Plot No.143, Ground Floor, Surat on the basis of secret information that some unknown persons are in possession of Neem Coated Urea meant for agricultural purpose and they are trying to sell and use it for commercial purpose. Upon inquiry from individuals present at Warehouse, it was informed that goods belonged to Nayak Natwarlal and Doctor Raj Hemant, partners of Krishna Import and Export who are petitioners in Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022. It is alleged by the detaining authority that goods found at Warehouse were obtained from firm viz. Tirupati Corporation i.e. petitioners of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022. It is alleged that present petitioner of Special Civil Application No.9370 of 2022 is proprietor of said Firm and the petitioner of Special Civil Application No.9397 of 2022 is his son who facilitated in supplying the goods. The petitioner of Special Civil Application No.10145 of 2022 is transporter. Samples were taken and same were found to be "Neem Coated Urea" meant for agriculture purpose and therefore, FIR came to be registered on 22.12.2021 for the offence punishable under section 25(1) of the Fertilizer (Control) Order, 1985 and under section 3 and 7 of Essential Commodities Act read with sections 406, 409, 487 and 114 of IPC.

3.2. According to the petitioners of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022, they are neither named in the FIR nor any role is attributed to them. But on the basis of statement of co-accused, they came to be arrested on 07.01.2022. Both the petitioners of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 were released on 12.01.2022. According to the petitioners, they are implicated in the aforesaid alleged offence on the surmises of the investigating Officer that the goods shown as "Carobamide for Industrial Use Only 46% Nitrogen" were found in the Warehouse along with invoices of Carbamide which are said to have been sold by firm of petitioner of Special Civil Application No.9370 of 2022 and same is actually "Neem Coated Urea", though no discovery or recovery is effected from the petitioners of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 nor they are found in possession of any Muddamal, whereas, the petitioners of of Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022 purchased the goods from the petitioners of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022.

3.3. According to the petitioners, petitioner of Special Civil Application No.9370 of 2022 – Jignesh Shah is proprietor of Tirupati Corporation and having valid registration certificate under GST. It is the case of the petitioners of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 that

after about 4 months from the date of registration of FIR on 22.12.2021, order of detention is passed on 26.04.2022 placing reliance on single FIR and investigation conducted in connection with said FIR. According to the petitioner of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022, after release on regular bail, there is no additional material to arrive at subjective satisfaction to detain the petitioners, since there is no material after being released on regular bail, the petitioner of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 are indulged in supply of Neem Coated Urea. According to the petitioner of Special Civil Application No.9370 of 2022, Special Civil Application No.9397 of 2022, Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022, though they have submitted detailed representation through Jail to District Magistrate, Surat and one copy of representation was forwarded to Secretary, Food and Civil Supply Department, Gandhinagar and also copy was forwarded to Additional Secretary, Union of India, Consumer's Affairs Department, Krushi Bhavan, New Delhi and also to Secretary, PMB Advisory Board and representation is delivered on 04.05.2022, but the petitioner Special Civil Application No.9370 of 2022, Special Civil Application No.9397 of 2022, Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022 are not communicated any reply with regard to said representation. Lastly, it is submitted that it is well settled principle of law that simplicitor registration of FIR cannot have any nexus to conclude that same is prejudicial to maintenance of supply of commodities essential to community and therefore, impugned order is illegal.

3.4. Learned advocates for the respective petitioners vehemently submitted that certain documents of hand written panchnama at page no.371 to 378 and bail order at page no.549 to 55 are absolutely illegible and these documents are referred to and relied upon in the grounds of detention. According to the learned advocates for the petitioners supply of illegible copy of particular document is as good as non supply of the same and once, particular document which is referred in the grounds of detention, it becomes part of grounds of detention and hence, non supply of the same amounts to non supply of the grounds of detention.

4. Per contra, respondent no.1 through Resident Additional Collector, has filed affidavit in reply inter-alia denying each and every factual details. It is submitted that samples collected from the raid 1210 bags of Urea / Carbamide were sent to Fertilizer Testing Laboratory and was tested positive as "Neem Coated Urea" chemical fertilizer. According to the authority, said chemical compound is sold as subsidized fertilizer to farmers through authorized and licensed Agro Centers and Co-operative Societies for agricultural purposes by checking and corresponding to Aadhar Card and Fingerprints in POS machines. According to the authority, the petitioner Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 do not hold license to sell the said chemical compound, still they are indulged in industrial sale of such chemical compound for their pecuniary benefits and thus sold the said chemical compound to Krishna Import and Export i.e. petitioner of Special Civil Application No.9642 of 2022 and Special

Civil Application No.10041 of 2022. In support of the same, 6 monthly bills along with transport details are produced at Annexure – R-1. According to the authority, the petitioner of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 within a period of 6 months sold chemical compound of 1150 tones worth Rs.2,17,12,000/-. As per say of the authority, the petitioner of Special Civil Application No.9370 of 2022 and Special Civil Application No.9397 of 2022 bought chemical compound at Rs.16 per kg, which as per Government subsidized rate only amount to Rs.5.92 per kg and sold it at the rate of Rs.26-77 per kg. to Krishna Import and Export in black market. It is further say of the authority that in order to evade getting caught red handed said chemical compound was sold in different packing and the bills were raised naming it as Carbamide. In view of above factual details, the authority has submitted to dismiss the petitions.

5. Similarly, respondent no.3 – Union of India has filed counter affidavit inter-alia supporting detention order. It is the case of respondent no.3 that Department has not received representation submitted by the detenu to District Magistrate and thus, prayed to dismiss the petitioner with cost.

6. We have heard learned advocates for the respective parties at length and carefully considered grounds of detention and materials / relevant documents provided to the petitioners. It is an undisputed fact that aforesaid documents i.e. panchnama and order of bail referred to in the grounds of detention. In this connection it is worthwhile to refer decision rendered in the case of Dharmista Bhagat v/s. State of Karnataka reported in 1989 Suppl. (2) SCC 155, after referring to Article 22 (5) of the Constitution of India, the Hon'ble Court has at page no.157 has observed as under :-

"Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory board as well as to the detaining authority. Therefore, the non-supply of legible copy of this vital document i.e. panchnama dated February 12, 1988 in spite of the request made by the detenu to supply the same renders the order of detention illegal and bad. This Court in *Mehrunissa v. State of Maharashtra* has observed that: (1981) 2 SCC 709 (SCC p.710) :

"The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure of the detaining authority to supply copies of such documents vitiated the detention, as has been held by this Court in the two cases cited by counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released forthwith."

7. It appears that petitioners of Special Civil Application No.9370 of 2022, Special Civil Application No.9397 of 2022, Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022 made representation to the competent authority on 02.05.2022 and same was received by the competent authority on 04.05.2022. It is a matter of fact that the State has neither dealt with this aspect of receipt and decision on the representation of the petitioners of Special Civil Application No.9370 of 2022, Special Civil Application No.9397 of 2022, Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022, whereas, it has come on record that petitioners of Special Civil Application No.9370 of 2022, Special Civil Application No.9397 of 2022, Special Civil Application No.9642 of 2022 and Special Civil Application No.10041 of 2022 have made representation, which did not reach to the State Government within 7 to 12 days. The only authority that could have considered the representation is the competent authority of the State Government and therefore, the representation ought to have reached to the competent authority and the State Government immediately. In view of this fact situation, the petitions deserve to be allowed on account of non forwarding of representation to the competent authority.

8. In view of above, we are inclined to allow the petitions. In the result, the present petitions are hereby allowed and the impugned order of detention dated 26.04.2022 passed by the respondent – detaining authority is hereby quashed and set aside. The petitioners - detenue are ordered to be set at liberty forthwith if not required in any other case.

Rule is made absolute to the aforesaid extent in each petition. Direct service is permitted. Registry to maintain copy of this judgment in each matter.