
(2000) 05 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 142 of 2000

Jitendra Chhabildas Jayswal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Citation : (2000) 4 GLR 608

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Subhadra G. Patel, for the Appellant; K.T. Dave, AGP for Respondent No. 1, 2, 3, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—The petitioner - Jitendrabhai Chhabildas Jaiswal, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Vadodara City, Vadodara, in exercise of powers u/s 3(1) of the PASA Act, dated December 19, 1999.

2. The grounds of detention indicate that the detaining authority took into consideration one prohibition offence registered against the petitioner. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of two incidents that occurred on October 7, 1999, October 23, 1999 and November 23, 1999 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers u/s 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

3. Ms. Subhadra Patel, learned advocate, appearing for the petitioner has raised the following contentions.

(a) Statements of anonymous witnesses are enormously relied upon by the

detaining authority. The detaining authority has improperly exercised powers u/s 9(2) of the PASA Act of claiming privilege of not disclosing the identity of the witnesses. In support of this contention, it is stated that the statements have been verified by the detaining authority on 18th December, 1999 whereas the order is passed on December 19, 1999 and, therefore, there was no time for the authority to undertake the exercise of verifying the genuineness of fear expressed by the anonymous witnesses and of judging the public interest vis-a-vis interest of the detainee.

(b) Representation was made on behalf of the detainee on January 6, 2000 which was received by the detaining authority on January 7, 2000 and what has happened thereto is not known. However, ultimately, it has been rejected by the government on 18th January, 2000 and, therefore, delayed consideration of the representation.

(c) Pages nos. 27, 28 and 29 of the compilation supplied to the detainee are not legible.

(d) Statements of witnesses namely Narendra, Sunil, Bhavin etc. recorded by the investigating agency u/s 161 of the Code of Criminal Procedure are not supplied to the detainee though demanded.

4. Ms. Patel has raised only these contentions and submitted that for the foregoing contentions, the detention order is rendered bad in law and the same may be quashed by allowing the petition.

5. Mr. K.T.Dave, learned AGP has opposed this petition. She submitted that if the affidavit-in-reply is seen, it clearly indicates that the detaining authority has undertaken the exercise required of it while exercising the powers u/s 9(2) of the PASA Act. He submitted further that, so far non-supply of statements of witnesses namely Narendra, Sunil, Bhavin etc. are concerned, they are in fact, not recorded by the investigating agency and therefore, there is no question of supply of such documents. As regards, illegible documents, he submitted that the petitioner has raised this point as an afterthought. This contention is raised by preferring an amendment application at a stage where the arguments were over and, therefore, may not be considered. He submitted that even if it is considered, that will take care of the registered offence as ground for detention. However, the statements of anonymous witnesses would still remain as ground of detention and in light of section 6 of the PASA Act and the decision of the Apex Court in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, , the registered offence as well as the statement of anonymous witnesses would, each form a separate ground for detention and, therefore, even if the registered offence is not considered, the statements would still remain as ground of detention. He also pressed into service the decision of this Court in Paresh Ramanlal Amin, close friend of Ramesh J. Shah v. State of Gujarat, rendered by a Full Bench on 31st March, 2000 in Special Criminal Application No.646/94.

6.1 Lastly, Mr. Dave submitted that so far as the representation is concerned, the representation was received by the detaining authority on 7th January, 2000 and the same was forwarded to the government on 9th January, 2000 immediately. The government received the same on 13th January, 2000. 14th January, 2000 was holiday and, therefore, the representation was decided on 18th January, 2000. As such, there is no delay on the part of the government in deciding the representation. Mr. Dave submitted that the petition may, therefore, be dismissed.

7. Having regard to the rival side contentions, it may be noted that a contention has been raised by the petitioner that the statements of witnesses Narendra, Sunil, Bhavin etc. recorded u/s 161 of the Cr.P.C. during the course of investigation of the registered offence by the investigating agency, have not been supplied. However, as it is clear from the affidavit-in-reply filed on behalf of the detaining authority, no such statements have been recorded and, therefore, raising of such contention in the absence of material with the petitioner itself reflects badly on the case of the petitioner. When the statements are not there, there is no question of supplying such statements and the ground, therefore, will not be available to the detainee for assailing the order of detention.

8. So far as the exercise of power u/s 9(2) of the PASA Act is concerned, it may be noted that the detaining authority, in the affidavit-in-reply has, in detail stated as to what exercise was undertaken by him while exercising powers. The authority has stated that he had personally summoned the witnesses and had verified and satisfied himself about the genuineness of the fear expressed by the witnesses. The authority was also satisfied that more important public interest would be served by not disclosing the identity of the witnesses on account of imminent danger on the sources of such particulars. The authority stated that the powers have been exercised with bonafide. While exercising such powers, the authority took into consideration the general background, character, antecedents, criminal tendency and propensity of the detainee and other matters which are relevant in the context of the informant and after carefully examining the said aspect, he was satisfied that the alleged apprehension was not imaginary or fanciful or that it is not a mere empty excuse invented by the informant to protect himself against the falsity of his version being exposed by effective explanation of the detainee. If the authority has taken such exercise, the exercise of powers u/s 9(2) of the PASA Act cannot be said to be genuine and, therefore, the contention that there is improper exercise of powers u/s 9(2) of the PASA Act, cannot be accepted.

9. So far as the representation aspect is concerned, the representation made on 6th January, 2000 was received by the detaining authority on 7th January, 2000 and forwarded to the government on 9th January, 2000. The government received it on 13th January, 2000. On 14th January, 2000, there was a holiday falling on Friday. 16th January, 2000 was again holiday being Sunday. On 18th January, 2000, the representation is rejected. Therefore, the procedure for

consideration of the representation by the has been completed within 2 working days i.e. 15th January, 2000 and 17th January, 2000. In this view of the matter, it cannot be said that there is delay in considering the representation by the government nor can it be said that there delay on the part of the detaining authority in forwarding the representation. The representation has been considered and rejected by the government. The ground advanced by the petitioner, therefore, cannot be accepted on this count.

The last point that is raised on behalf of the petitioner that requires to be considered is illegibility of pages nos. 27, 28 and 29 supplied to the detainee.

9.1 In page 27, the contents are legible except the rubber stamp which is affixed by the signatory. So far as page 28 is concerned, again, rubber stamp of the vendor of the stamp paper is not legible. So far as page 29 is concerned, again round seal of the "Police Inspector" is not fully legible. As can be seen, the contents are legible, however, illegibility of these stamps can be taken as a technical ground available to the detainee. This defence was available to the detainee from the very beginning and was known to the detainee when the petition was filed, but no such contention was raised nor such contention is raised in the representation also. But the contention is raised before the Court by way of an amendment application preferred after the arguments on the part of the petitioner were over. Only with a view that no prejudice may be caused to the detainee, the amendment was allowed in the facts of the case. However, considering the facts, the contention that is raised definitely seems to be an afterthought. If the detainee had genuinely felt difficulty in making representation or preferring the petition, he would have certainly raised this issue at those stages. As such there does not appear, any prejudice, caused to the interest of detainee. Still, however, in the interest of justice, since some of the portion is not legible, the contention is accepted by taking a lenient view in favour of the person whose liberty is at stake.

9.2 Now, accepting that contention would mean that the right of the detainee of making a representation is adversely affected in respect of the registered offence, his continued detention on that ground therefore, would be rendered bad in law.

10. However, keeping in light the provision of section 6 of the PASA Act, which is identical to the provisions of section 5A of the COFEPOSA Act and further keeping in light interpretation made by the Apex Court of section 5A in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, and in the case of Paresh Ramanlal Amin, close friend of Ramesh J. Shah v. State of Gujarat, in Special Criminal Application No.646/94, decided on 31st March, 2000 by the Full Bench of this High Court, each of the ground would be independent and severable and adopting a hypothesis adopted by the Apex Court for detention order could have been passed on the basis of each of the ground, statements of anonymous witnesses would still remain as ground of detention and this ground of detention based therein cannot be quashed as no defect is found qua this ground. The statements of anonymous witnesses indicate

disturbance to public order and clearly implicate the detenue with bootlegging and anti-social activities. The order based on these grounds cannot be quashed in absence of any defect.

11. Resultantly, even after accepting the contention that pages nos. 27, 28 and 29 are not legible and therefore, right of the detenue of making an effective representation is affected, the petition cannot be accepted nor can the detention be set aside as the detention is based on the statements of anonymous witnesses also, which cannot be quashed as no ground is shown or found for quashing the same.

12. In the result, the petition must fail and therefore, the petition is dismissed. Rule discharged with no order as to costs.