

(2014) 11 GUJ CK 0075
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1195 of 2014 in Spl. C.A. No. 4928 of 2014

Kayyum Babubhai Shaikh

APPELLANT

Vs

Police Commissioner and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Arms Act, 1959 — Section 25, 25(1)

Constitution of India, 1950 — Article 21

Gujarat Prevention Of Anti-social Activities Act, 1985 — Section 2(c), 3

Penal Code, 1860 (IPC) — Section 114, 212, 214, 294(b), 323

Citation : (2015) 1 GLR 394

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : Hemant Raval for Lopa M. Bhatt, Advocates for the Appellant; Rutvij Oza and Harshil Shukla, A.G.P, Advocates for the Respondent

Judgement

C.L. Soni, J.—This appeal filed under Clause 15 of the Letters Patent is against the judgment dated 4-8-2014 rendered by learned Single Judge in the petition preferred by the appellant seeking to quash the order of detention dated 11-2-2014 passed by respondent No. 1 under Gujarat Prevention of Anti-Social Activities Act, 1985 ("the Act"). Learned Single Judge has held that the subjective satisfaction reached by the detaining authority for detaining the appellant is legal and valid as the same is based on the offences alleged in the F.I.Rs. which have bearing on the Public Order. Other points raised by the appellant in the petition are held to be purely technical.

2. We have heard learned Advocates for the parties.

3. Learned Advocate Mr. Hemant Raval for Ms. Lopa M. Bhatt for the appellant submitted that the detaining authority relied on two F.I.Rs. registered against the appellant for passing the order of detention. Mr. Raval submitted that first F.I.R. registered on 16-1-2012 is of private dispute and second F.I.R. registered on 4-1-2014 is for possessing country-made revolver and the offence alleged is

under the Arms Act. Mr. Raval submitted that after the first F.I.R. was lodged, a period of about more than two years had passed and the alleged incident stated in the F.I.R. was a stale incident which could not have been considered for passing the order of detention. Mr. Raval submitted that so far as second F.I.R. is concerned, the alleged possession of country-made firearm by the appellant could not be considered to detain the appellant as "dangerous person". Mr. Raval submitted that against the above-said two F.I.Rs., remedy under the ordinary law since available, harsh action of detention under the Act ought not to have been resorted to against the appellant. Mr. Raval submitted that in any case, now only two months are left from the total period of detention and considering the grounds stated in the order of detention, this Court may interfere with the judgment of the learned Single Judge and quash the order of detention and release the appellant from detention.

4. Learned Assistant Government Pleader Mr. Rutvij Oza with Mr. Harshil Shukla submitted that learned Single Judge has in detail considered the grounds raised in the petition with the grounds of detention and found that the detaining authority has committed no error in reaching to the subjective satisfaction on the basis of the material available on record. Mr. Oza submitted that the material available on record in the form of F.I.Rs. clearly suggested that the activities of the appellant were falling within the definition of "dangerous person" and therefore, the detaining authority was justified in passing the order of detention against the appellant. Mr. Oza submitted that moving in public with arm creates problem of public order, and therefore, learned Single Judge has rightly observed that the activities of the appellant would create problem of the public order.

5. Having heard learned Advocates for the parties, we find that the appellant is considered to be a "dangerous person" within the meaning of Sec. 2(c) of the Act on the basis of the F.I.Rs. registered against him. The first F.I.R. was registered on 16-1-2012 for the offences under Secs. 324, 323, 294(b), 506(2), 114 and 427 of the Indian Penal Code and Sec. 135(1) of the G.P. Act. In the grounds of detention, it is stated that in respect of the incident alleged in the F.I.R., the appellant had also filed cross-complaint. However, for about two years, thereafter, no other offence is registered against the appellant under the Indian Penal Code. The second F.I.R. is for the offence under Sec. 25(1) of the Arms Act with Sec. 135(1) of the G.P. Act for possessing country-made pistol.

6. "Dangerous Person" defined under Sec. 2(c) of the Act, means a person, who either by himself or as a member of leader of gang, habitually commits, or attempts to commit or abets the commission of any of the offenses punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offenses punishable under Chapter V of the Arms Act, 1959. The use of word "habitually" has much relevance inasmuch as in order to call any person as "dangerous person" as per the definition under Sec. 2(c) of the Act, there should be repeated or continual acts amounting to the offenses referred to in the definition. Therefore, if there is no repeated act amounting to any offence in near

future or in proximity than registration of later offence after long time, as in the present case after a period of two years, would not be sufficient to brand a person against whom such offence is registered as "dangerous person". In the case on hand, the detaining authority has considered the F.I.R. registered against the appellant before a period of two years with the F.I.R. registered in the year 2014 which would not be sufficient to bring the appellant within the definition of "dangerous person".

7. It is required to be noted that the offence registered in the year 2014 is as regards the alleged possession of the country-made firearm by the appellant. No additional material is found to be considered by the detaining authority as to how simple possession of the country-made firearm by the appellant could be said to have affected the public order, especially when such offence could very well be dealt with under the ordinary law. There cannot be consideration that the person found with firearm may use such firearm in public, and thereby, problem of public order may be created. Such futuristic approach is not warranted when the order of detention is tested. The detention can never be by way of a punitive measure as it amounts to taking away the liberty of a citizen which is protected under Art. 21 of the Constitution of India. There has to be clear subjective satisfaction on the basis of the material available as regards a person being a "dangerous person" and about the disturbance of the public order by his alleged activity.

8. In the case of *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others*, , the Hon'ble Supreme Court has held and observed in Paras 10 to 12 as under:

"10. Now reverting to the grounds of detention and the summary of incidents alleged against the petitioner as mentioned in the beginning of this judgment, it may be stated that the first incident is said to have taken place on 24-4-1993 at about 6-45 p.m., in which the detenu-petitioner along with some of his associates is alleged to have dragged out the complainant, one Mohd. Hussain from inside the Hair Cutting Saloon of Shahpur and associates of the petitioner fired four rounds from the revolver injuring the complainant and one another customer. The report lodged by the complainant Mohd. Hussain himself on 24-4-1993, a copy of which has been placed on record, goes to show that a day earlier, that is on 23-4-1993 at about 9-30 p.m., there was a quarrel between Amjad Khan, the younger brother of the complainant Mohd. Hussain and the petitioner upon sounding the scooter horn in the gali of the house of the petitioner and it was in that connection that next day i.e. on 24-4-1993 the alleged incident of assault by the petitioner and his associates to the complainant Mohd. Hussain took place. From the narration of facts in the said complaint it is abundantly clear that the criminal activity was directed against an individual and from the nature of the incident, it is difficult to assume that it gave rise to public order disturbing the tranquility of the locality. At the most it was a criminal act directed only against an individual which has nothing to do with the question of

public order It appears that it was on account of the earlier day incident that the petitioner made a plan along with his associates to teach a lesson to the complainant by assaulting him when he was seen in the Hair Cutting Saloon on 24-4-1993. This apart the incident had occurred on 24-4-1993 while the detention order was passed on 19-8-1994 after the lapse of more than 16 months. This long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not approximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing an order of detention. The second incident dated 11-4-1994 was that the detenu-petitioner was harbouring offender which is an offence under Secs. 212/214 of the I.P.C., An offence under Secs. 212/214 of the I.P.C. cannot be made a basis for passing an order of detention against the petitioner as the said offence does not fall either under Chapters XVI or XVII of the I.P.C. In order to bring a person within the definition of Sec. 2(c) of the Act it is essential to show that such person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. But as pointed out earlier the offence registered against petitioner under F.I.R. of C.R. No. 7 of 1994 of D.C.B. dated 11-4-1994 is one under Secs. 212/214 of the I.P.C. which falls under Chapter XI of the I.P.C. and not under any of the Chapters XVI or XVII which is the requirement of Sec. 2(c) of the Act. This incident, therefore, cannot be made a basis for satisfaction of the detaining authority that petitioner is a habitual offender, so as to sustain the order of detention.

11. This brings us to criminal activities of the detenu-petitioner which are said to have taken place on 10-8-1994 at 4-00 p.m. and on 12-8-1994 at 7-00 p.m. In the incident dated 10-8-1994 the petitioner is alleged to have purchased goods worth Rs. 5(K) from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12-8-1994 at about 7-00 p.m. the detenu-petitioner stopped the witness on the road near eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effect prejudicial to the maintenance of public order disturbing the even tempo of life or the peace and tranquility of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make

further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12-8-1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appears to have been registered against the detenu-petitioner concerning the said incident. There remains the solitary incident dated 10-8-1994 pertaining to the alleged beating of a businessman which as said earlier directed was against an individual having no adverse affect on public at large. Besides, the solitary incident dated 10-8-1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or abetting the commission of offences as contemplated in Sec. 2(c) of the Act, because the expression "habitually" postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position with regard to the recovery of .32 bore country-made revolver from the possession of the petitioner without any permit or licence which is an offence under Sec. 25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an Act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above, it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenu-petitioner was habitually engaged in criminal activities, and therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case, and therefore, the detention order could not be sustained."

9. As in the facts of the case and applying the decision of the Hon"ble Supreme Court in the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, , we find that both the F.I.Rs. will have no significance to arrive at subjective satisfaction by the detaining authority for the appellant to be a "dangerous person". There is one additional aspect of the matter to the effect that the appellant has suffered detention for almost a period of nine months. Considering such aspect also, we find that the appellant should no more be continued in detention. For the reasons stated above, the impugned judgment passed by learned Single Judge and the order of detention dated 11-2-2014 passed by the respondent No. 1 Police Commissioner, Ahmedabad City at Annexure-B to the petition are quashed and set aside. The appellant is

ordered to be released from detention and set free forthwith, if not required in any other case. The appeal is allowed accordingly. D.S.