

(2019) 07 GUJ CK 0119

In the Gujarat High Court

Case No : R/Special Civil Application No. 10551 Of 2019

Maksud @ Sahil @ Bachho Makbulbha Babubhai Shaikh
Thromother- Faridabanu Makbulbhai Shaik

APPELLANT

Vs

Commissioner Of Police

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(c), 3(2)
Indian Penal Code, 1860 — Section 114, 201, 379, 394

Citation : (2019) 07 GUJ CK 0119

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Shaikh, Sahil Trivedi

Final Decision : Allowed

Judgement

1. Heard learned advocates appearing for the respective parties.
2. The present petition is directed against order of detention dated 28.02.2019 passed by the respondentâ€"detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short â€"the Actâ€") by detaining the petitionerâ€"detenue as defined under section 2(c) of the Act.
3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of offences under Sections 394, 201, 379 and 114 of the Indian Penal Code by itself cannot bring the case of the detenue within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detenue submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing

with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detainee with breach of public order.

Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the

detainee with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of

people at large or that on the basis of criminal cases, the detainee had put the entire social apparatus in disorder, making it difficult for whole system to

exist as a system governed by rule of law by disturbing public order.

4. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence

was found during the course of investigation, which was also supplied to the detainee indicate that detainee is in habit of indulging into the activity as

defined under section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and

detention order deserves to be upheld by this Court.

5. Having heard learned advocates for the parties and considering the facts and circumstances of the case, it appears that the subjective satisfaction

arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law, inasmuch as the offences alleged in the FIR/s cannot

have any bearing on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that

the allegations as have been levelled against the detainee cannot be said to be germane for the purpose of bringing the detainee within the meaning of

section 2(c) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as

to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said

that the detainee is a person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that

the detainee is acting in such a manner, which is dangerous to the public order. In this connection, it will be fruitful to refer to a decision of the

Supreme Court in Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852], where the distinction between 'law and order' and 'public order'

has been clearly laid down. The Court observed as follows :

â??Does the expression ""public order"" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of

assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a

street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities

under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The

contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In

this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure

the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a

secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the

Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act.â??

6. The distinction between ""public order"" and ""law and order"" has been carefully defined in a Constitution Bench judgment of the Supreme Court in the

case of Dr. Ram Manohar Lohia v. State of Bihar & Others, (1966) 1 SCR 709. In this judgment, His Lordship Hidayatullah, J. by giving various

illustrations clearly defined the ""public order"" and ""law and order"". Relevant portion of the judgment reads thus:

....Does the expression ""public order"" take in every kind of disorder or only some? The answer to this serves to distinguish ""public order"" from ""law

and order"" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does

not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to

maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival

communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public

disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must

affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under

the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(I)(b) to

prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those

affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three

concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle

represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but

not security of the State....

7. In *Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and others*, reported in AIR 2003 SC 971, the Supreme Court made the

following observations:

“The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1000/”.

Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the

locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that

the case of 'Goonda' the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a

goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a

breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of

the act upon the society; that a solitary assault on one individual can hardly be

said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention.â??

8. The Detaining authority has relied upon the registration of two offences of the Indian Penal Code. First offence is registered on 27.01.2019 and the detenue has enlarged on regular bail on 21.02.2019, whereas another offence is registered on 15.02.2019, wherein the detenue has enlarged on regular bail on 27.02.2019. Thereafter, immediately on 28.02.2019, the detention order is passed.

9. In view of above, I am inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention No.

PCB/DTN/PASA/207/2019 dated 28.02.2019 passed by the respondent â?" detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case.

10. Rule is made absolute accordingly. Direct service is permitted.