

(2003) 05 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 11345 of 2002

Malabhai Nathbhai Devipujak

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 1064

Hon'ble Judges : J.N. Bhatt, Acting C.J.

Bench : Single Bench

Advocate : V.L. Thakkar, for the Appellant; S.J. Dave, A.G.P. for Respondent No. 1-3, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, Acting C.J.

1. This petition, under Article 226 of the Constitution, is directed against the order of detention passed by the Commissioner of Police, Rajkot city, against the petitioner in exercise of powers conferred u/s 2[c] of the Gujarat Prevention of Antisocial Activities Act, 1985 [the PASA Act]. A few material and important facts may be highlighted at this stage.

[1] The impugned detention order came to be recorded by the Commissioner of Police, Rajkot City, the respondent No. 1, detaining the detenu under the PASA Act on 27.9.2002.

[2] The grounds of detention came to be served and communicated by the respondent No. 1 to the detenu.

[3] The order of detention has actually been executed upon the detenu on 27.9.2002.

[4] A friend of the petitioner had made a representation and addressed to the Commissioner of Police, Rajkot City as well as the Government.

2. The detention order is passed against the detenu under Sub Section [2] of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 [the PASA Act] with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area pertaining to Malviya Police Station and Ganghigram Police Station, Rajkot city, in exercise of powers conferred u/s 3[2] of the PASA Act. The detenu was served with the copy of the order of detention dated 27.9.2002. The detenu was also supplied with the grounds of detention along with the documents running into 89 pages.

3. The respondent authority has treated and branded the detenu as a " dangerous person" within the meaning of Section 2[c] of the PASA Act and, therefore, the detaining authority has referred to and relied upon cases registered at Malviya Police Station and Ganghigram Police Station, Rajkot city vide C.R.No. 340/2002 dated 17.9.2002 for the offence punishable u/s 379 of the Indian Penal Code, C.R.No. 293/2002 dated 03.9.2002 for the offence punishable u/s 379 of the Indian Penal Code, C.R.No. 310/2002 dated 17.9.2002 for the offence punishable u/s 379 of the I P C, C.R.No. 312/2002 dated 17.9.2002 for the offence punishable u/s 379 of the Indian Penal Code and C.R.No. 313/2002 dated 17.9.2002 for the offence punishable u/s 379 of the Indian Penal Code, all of them, one aforesaid FIR registered with Malviya Police Station and four aforesaid FIRs registered with Gandhigram Police Station, Rajkot city, and the aforesaid cases have been shown as pending investigation as well as trial. Therefore, it becomes clear that the petitioner is involved in a theft activities and he is carrying dangerous activities and therefore, he is branded as "dangerous person"

4. It has been contended on behalf of the petitioner that the main point goes to the root of the matter pertaining to the delay in consideration of the representation by the competent authority. It has been stated that the petitioner, a friend of the detenu sent a representation on 16.10.2002 and it was sent to the Government for confirmation on 25.10.2002 and it came to be decided on 29-10-2002 and the copy of the detention order was dispatched for communication on 01.11.2002, therefore, it is very clear that the authority has taken long time in consideration of the representation. It is very well propounded and expounded by the Hon"ble Apex Court that considering the unexplained delay whether short or long, especially when the detenu has taken a specific defence or plea of delay, the order of detention has to be quashed. No doubt, it is true that delay, ipso facto, in passing the order of detention after an incident or incidents would not be fatal to the detention of a person, for in certain cases it may be unavoidable or reasonable. What is required by law is that the delay has to be satisfactorily accounted for or explained by the detaining authority so as to obliterate the snapping of link between the prejudicial activities and the purpose of detention. In the facts of the present case, the delay has not been explained much less satisfactorily. Since this question goes to the root of the matter, other grounds are not probed meticulously.

5. Therefore in the opinion of this Court, the detention order is required to be quashed and set aside on the ground of delay in consideration of the representation made on behalf of the petitioner- detenu by his friend. In the result, the petition succeeds, and accordingly it is allowed. The questioned detention order shall stand quashed and set aside. The petitioner detenu shall be set at liberty, provided he is not required in any other case. Rule is made absolute accordingly leaving the parties to bear their own costs. Direct service is permitted.