

(2016) 01 GUJ CK 0113
In the Gujarat High Court
Case No : Special Civil Application No. 20805 of 2015

Manoj	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Bombay Prohibition Act, 1949 — Section 116(1)(b), Section 65(a)(e), Section 66(b), Section 81
Constitution of India, 1950 — Article 226
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 2(b), Section 3(1), Section 3(2)</p>
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such magnitude and intensity as to have the effect of disturbing the public order so as to pass an order under Section 3(1) of the PASA Act. Learned advocate for the petitioner has further submitted that the detaining authority has not applied its mind to the vital facts and there was non-application of mind before recording the order of detention.

4. Learned A.G.P. 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 detenu, indicating that the detenu is in the habit of indulging into activities as defined under Section 2(b) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and the detention order deserves to be upheld by this Court. For such submission, the learned A.G.P. took me through the grounds upon which detaining authority satisfied to detain the petitioner.

5. Section 2(b) of the Act defines the term "bootlegger" as under:

"2(b). "bootlegger" means a person who distills, manufactures, slurs, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 (Born. XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing."

6. The order of detention is passed on the basis of what has come to be known as the subjective satisfaction of the detaining authority such subjective satisfaction has to be arrived at on two points. Firstly, on the veracity of facts imputed to the person to be detained and secondly, on the prognostication of the detaining authority that the person concerned is likely to indulge again in the same kind of notorious activities. Whereas, normal laws are primarily concerned with the act of commission of the offences, the detention laws are concerned with character of the person who has committed or is likely to commit an offence. The detaining authority has, therefore, to be satisfied that the person sought to be detained is of such a type that he will continue to violate the laws of the land if he is not preventively detained. So, the commission of infraction of law, not done in an organized or systematic manner, may not be sufficient for the detaining authority to justifiably come to the conclusion that there is no alternate but to preventively detain the petitioner.

7. Having heard learned counsel 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 since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenu cannot be said to be germane for the purpose of bringing the detenu within the meaning of Section 2(b) of the Act and unless and until the material is there to make out a case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the whole social apparatus is in peril disturbing public order at the instance of such person. In view of the allegations alleged in the F.I.R./s the Court is of the opinion that the activities of the detenu cannot be said to be dangerous to the maintenance of public order and at the most fall under the maintenance of "law and order." In this connection, it will be fruitful to refer to a decision of the Supreme Court in *Pushker Mukherjee v. State of West Bengal* [, AIR 1970 SC 852], where the distinction between "law and order" and "public order" has been clearly laid down.

8. It is generally seen that though some of the accused are repeatedly detained on different occasions for different offences, only because of nondisclosure of proper information and in all such detention orders, such orders are generally quashed and set aside by the Court. It is also seen that because of quashing of previous detention order, competent authority could not consider the grounds of detention under such order which is already quashed as a ground for detention for subsequent offences by the same detenu. However, when competent authorities are not abiding all other cited cases while passing the order of detention based upon solitary offence, it is surprising to note that at no point of time they challenged the observation of any Court that when previous order of detention has been quashed, it cannot be considered in subsequent detention. It goes without saying that if a particular detenu continuous to commit the similar offence repeatedly, and if he is required to be detained repeatedly then at-least at some point of time, the competent authority shall compile all the information and shall consider it for fresh detention order as and when necessary and shall produce all such information before the Court so as to avoid the quashing of such detention order. If competent authority fails to take care of such exercise and when in impugned order of detention all such facts were not disclosed or considered for passing such order, the detention order is required to be dealt with.

8.1 In the present case, it seems that petitioner has been detained several times but at present, the detention order under challenge does not disclose all such facts so as to enable the petitioner to properly represent his case. Hence, there is no option but to consider that present order of detention is solely based upon a solitary offence. Therefore, considering the settled legal position that no person can be detained for a solitary offence, the Court has no option but to quash and set aside the order of detention, irrespective of quantity of LIQUOR found from the detenu and other material that might have been found in the affidavit-in-reply.

8.2 In view of above facts and circumstances, it would be necessary to observe that the competent authority is not precluded to disclose all material facts while detaining the petitioner if so require for any offence that he might commit hereinafter. In other words, though impugned order is quashed and set aside at present, it would not come in way of the competent authority for quoting such FIR/s and order of detention, thereby to treat petitioner as a habitual offender in case of commission of offence repeatedly.

8.3 No doubt, neither the possibility of launching of a criminal proceedings nor pendency of any criminal proceedings is an absolute bar to an order of preventive detention. But, failure of the detaining authority to consider the possibility of either launching or pendency of criminal proceedings may, in the circumstances of a case, lead to the conclusions that the detaining authority has not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Since there is an allegation that the order of detention is issued in a mechanical manner without keeping in mind whether it was necessary to make such an order when an ordinary criminal proceedings could well serve the purpose. The detaining authority must satisfy the court that the question too was borne in mind before the order of detention was made. In the case on hand, the detaining authority failed to satisfy the court that the detaining authority so bore the question in mind and, therefore, the court is justified in drawing the inference that there was no application of mind by detaining authority to the vital question whether it was necessary to preventively detain the detenu. It is also fruitful to refer to the decision of the Hon"ble Apex Court rendered in the case of *Rekha v. State of Tamil Nadu* through Secretary to Government and another reported in , (2011)5 SCC 244 wherein, it is observed by the Hon"ble Apex Court that if a person is liable to be tried, or is actually being tried for a criminal offence but the ordinary criminal law will not be able to deal with the situation, then and only then, preventive detention be taken recourse to.

9. As a result of hearing and perusal of the record, it appears that the material that was available with the detaining authority was the offences registered against the detenu and on that basis, it cannot be said that the activity of the detenu has become a threat to the maintenance of "public order" and "public health". Mere involvement of the detenu in such activity may not amount to dangerous activity by the detenu and mere mention of them, unless supported by any evidence, cannot be said to be material germane for the purpose of arriving at the subjective satisfaction that the activity of the detenu is prejudicial to the maintenance of "public order" and "public health". For the sake of repetition, the commission of offence does not exhibit or disclose that the petitioner is doing infraction of law in an organized or systematic manner so as to come to the conclusion that there is no alternate but to preventively detain the petitioner.

10. In the result, this petition is allowed. The impugned order of detention dated

24/7/2015 passed by the respondent authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.