

(2020) 08 GUJ CK 0265
In the Gujarat High Court

Case No : R/Special Civil Application No. 8374 Of 2020

Mohamad Sajid Mohamad Aslambhai Sheikh Thro
Khurashidabanu Mohemadaslam Shaikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(c), 3(2)
Arms Act, 1959 — Section 25(1B)
Gujarat Police Act, 1951 — Section 135(1)
Indian Penal Code, 1860 — Section 114, 306

Citation : (2020) 08 GUJ CK 0265

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : Jagdish R Rana, Salim M Saiyed, Dhvani Tripathi

Final Decision : Allowed

Judgement

Umesh A. Trivedi, J

[1.0.] This petition under Article 226 of the Constitution of India is directed against the order of preventive detention dated 12.03.2020 passed by the Police Commissioner, Ahmedabad city, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (herein after referred to as 'the Act') whereby, the petitioner has been detained as a 'Dangerous Person'. The aforesaid order came to be executed upon the petitioner on the very same day.

[2.0.] Mr. Salim Saiyed, learned advocate for the petitioner submitted that to brand the petitioner as a 'Dangerous Person' under Section 2(c) of the Act, the Authority has relied on two offences registered at (i) C.R.No.II-3097 of 2018 for the offence punishable under Sections 25(1-B) A of the Arms Act and Section 135(1) of the G.P. Act registered on 24.10.2018 and (ii) C.R.No.I-24 of 2019 for

the offence punishable under Sections 306 and 114 of Indian Penal Code registered on 10.03.2019. Pursuant to the registration of these offences, the applicant came to be arrested on 24.10.2018 and released on bail by an order dated 26.10.2018 for the first offence as also in second offence the applicant came to be arrested on 11.03.2019 and released on bail by an order dated 28.08.2019, as reflected from the order of detention. He has also submitted that the registration of offences under the Indian Penal Code simplicitor will not reflect breach of public order. However, the order of preventive detention has come to be passed on 12.03.2020, and therefore, there is inordinate delay snapping live link between his activities and order passed by the authority. However, he has submitted that mere registration of FIR/s for the offence under the Indian Penal Code by itself would not render the petitioner liable in absence of any credible material to conclude that his activities are prejudicial to the maintenance of public order. Referring to the impugned order, it is pointed out that the subjective satisfaction of the detaining authority is based upon the fact that the petitioner is a dangerous person as defined under Section 2(c) of the Act. It is submitted that merely because a person can be termed as dangerous person unless his activities are found to be prejudicial to the maintenance of public order, a person cannot be preventively detained. Therefore, he has submitted that subjective satisfaction recorded by the detaining authority is vitiated and therefore, order of preventive detention is required to be quashed and set aside.

[3.0.] Over and above that, the detaining authority has relied on statements of two anonymous witnesses. He has, drawing attention of the Court to the date of recording statements of anonymous witnesses, submitted that it has come to be recorded on 11.03.2019 and verified by the detaining authority himself on 12.03.2020 whereas the petitioner ordered to be released on bail in last offence 28.08.2019. However, the order of preventive detention has come to be passed on 12.03.2020. He has further submitted that subjective satisfaction recorded by the detaining authority is vitiated, and therefore, order of preventive detention is required to be quashed and set aside.

[4.0.] As against that, Ms. Dhvani Tripathi, learned Assistant Government Pleader, trying to salvage the situation on account of delay in passing the order, submitted that, after considering the material placed before the detaining authority and careful examination thereof, the order of preventive detention is passed by the detaining authority, and therefore, it cannot be said that there is any delay in passing an order of detention. He has submitted that the detaining authority, having found the activities of the petitioner prejudicial to the maintenance of public order, has passed the order of detention and no interference is called for, as subjective satisfaction has been validly recorded. He has further submitted that delay of 6 months, cannot be considered to be inordinate delay so as to call for interference by this Court with the order of detention, and therefore, she has submitted that the present petition is required to be dismissed

[5.0.] Having heard the learned advocates for the appearing 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 breach of public order and the penal laws are sufficient enough to take care of the situation. Except the allegations, there is no credible material on record, which shows that the petitioner is acting in any manner prejudicial to the maintenance of public order. It will be fruitful to refer to a decision of the Supreme Court in the case of Pushkar Mukherjee & Ors Vs. The State of West Bengal reported in AIR 1970 SC 852 where the distinction between 'law and order' and 'public order' has been clearly laid down:

"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."

[6.0.] Thus, the activities of the petitioner, based on registered offences, cannot be said to be in any manner prejudicial to the maintenance of public order and therefore, the subjective satisfaction arrived at by the Detaining Authority is vitiated.

[7.0.] The first offence relied on by the detaining authority came to be registered on 24.10.2018 and the petitioner came to be arrested on the very same day and released on bail vide order dated 26.10.2018 by the Competent Court, it is too stale a case to be considered or relied on by the detaining authority while passing the order of preventive detention on 12.03.2020. Therefore, the detaining authority is left with a case at serial No.2, which is a solitary offence in proximate time. Not only that, if the case against the detainee - petitioner at serial No.2 is considered, it is an offence under Section 306 where unfortunately wife of the detainee had committed suicide. Considering the FIR and record of that case not only it falls short of breach of public order, there cannot be any, as it is absolutely an offence of a very personal nature, that too, between the

husband and wife where one has committed suicide, may be the husband has abetted that suicide, none is concerned about the said suicide apart from the family members of the deceased as also the family members of the detainee, public at large being affected by very offence, is too far. Therefore, based on that solitary offence in proximate time, no order of detention could have been passed by the detaining authority. On this ground alone, the subjective satisfaction recorded by the detaining authority is vitiated.

[8.0.] Not only that, the order of detention passed against the petitioner - detainee is required to be quashed and set aside on the ground of inordinate, unreasonable and unexplained delay in passing the order of detention even considering the date of his release on bail i.e. 28.08.2019, the order of detention came to be passed on 12.03.2020, there is undue, unreasonable and unexplained delay of nearly 6 and half months and on that ground also, the detention order is required to be quashed. As such, delay has to be considered from the last offence registered against the detainee as that activities of the petitioner which are objectionable, if the date of last offence i.e. 10.03.2019 is considered, the present order of detention came to be passed only on 12.03.2020 after about a year from the last offence committed.

[9.0.] As such, this petition should be allowed with a cost, but I refrain myself from doing so for the present. If the activities of the petitioner were such that except the order of preventive detention he cannot be prevented acting in any manner prejudicial to the maintenance of public order, the powers could have been exercised within a reasonable time period.

[10.0.] Considering the submissions made by the appearing parties, it is clear that, there is a delay of nearly 6 months in passing the order of detention from the date of his release on bail and 1 year from the last offence registered. Though, the order of detention cannot be quashed on the ground of delay if it is explained, in absence of plausible explanation for the delay, the order of detention can be quashed on that ground alone. Here in this case there is no explanation at all.

[11.0.] In view of the above, the petition succeeds and is accordingly allowed. The impugned order of detention bearing No.PCB/DTN/PASA/265/2020 passed by respondent no.2 - Police Commissioner, Ahmedabad City dated 12.03.2020, is hereby quashed and set aside and the petitioner - detainee is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute.