

(1989) 04 GUJ CK 0004

In the Gujarat High Court

Case No : Spl. Cri. Application No. 1004 of 1988

Najuddin Karimuddin Shaikh

APPELLANT

Vs

The Commissioner of Police and Others

RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

Constitution of India, 1950 — Article 141, 22(5), 226

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3, 3(1), 6, 9(1)

Citation : (1990) CriLJ 276 : (1989) 2 GLR 266

Hon'ble Judges : V.H. Bhairavia, J;S.B. Majmudar, J

Bench : Division Bench

Advocate : M.C. Kapadia, for the Appellant; H.B. Antani, Assistant Public Prosecutor (for No. 2), for the Respondent

Final Decision : Allowed

Judgement

S.B. Majmudar, J.—In this petition under Article 226 of the Constitution, the petitioner Najuddin Karimuddin Shaikh has brought in challenge the order of his preventive detention passed against him by the Commissioner of Police, Surat City Mr. M. C. Kalma on 15-9-1988 in exercise of the powers under Sub-section (1) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short). He has also been supplied with the grounds of detention of even date when he was taken in detention pursuant to the impugned order.

2. At the time of final hearing of this petition, various contentions were canvassed by the learned counsel for the petitioner in support of the petition. However, ultimately he highlighted one contention which, in our view, goes to the root of the matter and which makes it unnecessary for us to refer to the other contentions. The contention which Was vehemently canvassed for our consideration was to the effect that the Detaining Authority while passing the impugned order of detention, had relied upon the alleged involvement of the petitioner-detenu in bootlegging activities for the period from 1983 to 1987 for which activities, the detenu was already detained earlier by the order dated

21-2-1987 and which detention order was quashed by this Court on 24-8-1987. Consequently, this material could not have been pressed in service on the present occasion by the Detaining Authority for treating the detenu as bootlegger who has disturbed the public order and only on this ground, subjective satisfaction on which the impugned order of detention is passed, has got vitiated and hence the order of detention is liable to be quashed.

3. So far as this contention is concerned, strong reliance is placed on a recent decision of the Supreme Court in the case of Chhagan Bhagwan Kahar v. M. L. Kalna in a writ petn. (Civil) No. 61 of 1989 decided by Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others, . Before referring to that judgment, it is necessary to refer to the relevant grounds on the basis of which the impugned order of detention has been passed. They are at Annexure B to the petition. First paragraph thereof reads that the detenu was allegedly keeping in his possession country made as well as English liquor and was selling the same at his dens situated at Udhana Road No. 6 and Udhana Road No. 9 and that for that purpose he was transporting the liquor on large scale. He had no licence for such activities. That from 1983 to 1988, the detenu was involved in all 15 prohibition cases under the Bombay Prohibition Act. Out of those cases, 12 cases were pending trial while three cases were under investigation. The details of these cases were furnished by way of Annexure I to the grounds of detention. When we turn to Annexure A to the grounds of detention, we find listed therein 15 criminal cases filed against the detenu from time to time from 17-6-1983 to 12-9-1988. Grounds of detention also recite in para 2 sub-para 4 that eventhough earlier steps were taken against the detenu, they had no corrective effect on him and he was, therefore, required to be detained once again by an order dated 21-2-1987 under the PASA Act and he was kept in Broach Sub-Jail. He had challenged said detention order in the High Court being Spl. Cri. Application No. 319/87 which was allowed after hearing by the High Court on 24-8-1987 and he was released from detention. Even thereafter, he had continued his bootlegging activities and was again involved in four prohibition cases. It is then recited that on 11-6-1983 the detenu was involved in first prohibition case and he was released on bail in that case and thereafter on number of occasions till 12-9-1988, he was arrested in as many as 15 prohibition cases. In para 4 of the grounds of detention, it is then recited that having considered the aforesaid evidence against the detenu carefully and in the light of the material in para 1 of the grounds of the detention, it was ascertained that the detenu was keeping in his possession country made liquor as well as english wine and was selling the same in public by running dens and was also transporting liquor. He was involved in so many prohibition cases and he was a known bootlegger. Along with those grounds of detention, the detenu was also supplied with the relevant material supporting the grounds of detention. Copies of first information reports concerning various criminal cases listed at Ex. Nos. 1 to 15 in the statement of criminal cases referred to in para 1 of the grounds, were also supplied to the detenu along with the grounds of detention. The detenu was also supplied copy of the grounds of

detention supporting his earlier detention order dated 21-2-1989 as also the copy of the earlier detention order. Along with grounds of detention, as supporting material, judgment of the High Court quashing earlier detention order was also supplied to him. The same is rendered by the Division Bench of this Court (Coram B. H. Shukla P. M. Chauhan, JJ.) on 24-8-1987 Spl. Criminal Application No. 319/87. On a comparison of the earlier grounds of detention on which the order of detention dated 21-2-1987 was passed, with the present grounds of detention, it is seen that the criminal cases listed at Sr. Nos. 1 to 11 in the present statement of prohibition cases in which the detenu was involved were the very same cases on which the earlier order of detention dated 21-2-1987 was passed against the detenu. In the present case, fresh material relied on is by way of criminal cases at Sr. Nos. 10 to 15 which are four additional cases under the Prohibition Act for a period between 5-12-1987 to 12-9-1988.

4. It is pertinent to note that all this material was supplied to the detenu in the present case as per the requirement of Section 9(1) of the PASA Act which lays down that "when a person is detained in pursuance of a detention order the authority making the order shall, as soon as may be, but not later than seven days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government." This provision is on the same lines of the provisions of Article 22(5) of the Constitution of India. Therefore, it must be held that the petitioner's involvement in the first 11 criminal cases listed in the statement of criminal cases supplied to the detenu reflected the same material on which the earlier order of detention dated 21-2-1987 was passed and which order came to be quashed by this Court in Spl. Criminal Application No. 319/87. It was, therefore, contended by Mr. Kapadia, learned counsel for the petitioner that the involvement of the petitioner in the earlier 11 criminal cases could not have been made the basis for the present order as that is not legally permissible when the High Court had quashed the earlier order of detention based on that very material and, therefore, subjective satisfaction underlying in the present order must be held to be vitiated in law.

5. So far as the factual basis of the aforesaid contention is concerned, no doubt is left in our mind that the detaining authority on the present occasion also has relied upon the earlier material showing involvement of the petitioner in 11 prior criminal cases under the Prohibition Act on the basis of which the petitioner was sought to be detained in 1987. and which detention order was quashed by this Court. It is not possible to agree with the contention of the learned counsel for the respondents that in the present occasion only fresh four cases in which the petitioner was involved after the quashing of the earlier order of his detention by this Court were relied upon by the detaining authority for basing the present order of detention against the petitioner. A conjoint reading of the relevant paragraphs of the grounds of detention and supporting material referred to by us in details above, contra indicates this situation and conclusively points out the

fact that even the earlier material which was the basis of the former order of detention, has been pressed in service even on the present occasion by the detaining authority to pass the present impugned order of detention.

6. It is in the back ground of the aforesaid fact situation that we have to consider the ratio of the decision of the Supreme Court in *Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others*, . In that case, two learned Judges of the Supreme Court in almost identical situation, have voided the order of detention passed by the very same Commissioner of Police, Surat against a detenu who was also sought to be detained as a bootlegger under the PASA Act. *B. Ratnavel Pandian, J.*, in para 13 (of (1989) 1 JT): (at para 12 of Cri LJ) of the report, after considering the various judgments of the Supreme Court, has laid down as under:--

"It emerges from the above authoritative judicial pronouncements that even if the order of detention comes to an end either by revocation or by expiry of the period of detention there must be fresh facts for passing a subsequent order. A fortiori when a detention order is quashed by the Court issuing a high prerogative writ like habeas corpus or certiorari the grounds of the said order should not be taken into consideration either as a whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strike down an earlier order by issuing rule it nullifies the entire order."

7. In para 14 of the report, it was observed that "no doubt, the order of detention contains fresh facts. In addition to that the detaining authority has referred to the earlier detention order and the judgment of the High Court quashing it, presumably for the purpose of showing that the detenu in spite of earlier detention order was continuing his bootlegging activities." It was further found looking to para 9 of the affidavit-in-reply that earlier order of high Court and the grounds of detention of earlier order were also supplied to the detenu, and that showed that the detaining authority for passing the impugned order had relied upon the earlier material. Having noted the said facts, it was held that the order of detention was vitiated on the ground that the detaining authority had taken into consideration the grounds of earlier detention order along with other material for passing the impugned order.

8. The fact situation in the present case is almost identical. Consequently, the ratio of the aforesaid decision of the Supreme Court squarely gets attracted in the, present case and would nullify the present order of detention on the very same grounds which appealed to the Supreme Court in *Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others*, . However, the learned counsel for the respondents tried to salvage the situation by submitting that the Supreme Court, in the aforesaid case, had no opportunity of referring to Section 6 of the PASA Act which reads as under : --

"6. Where a person has been detained in pursuance of an order of; detention u/s 3 which has been made on two or more grounds, such order of detention shall be

deemed to have been made separately on each ground and accordingly--

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are--

(i) vague;

(ii) non-existent;

(iii) not-relevant;

(iv) not connected or not proximately connected with such person; or

(v) invalid for any other reason whatsoever;

and it is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in Section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or the officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

9. It was submitted that if Section 6 of the PASA Act was noticed by the Supreme Court, it would have possibly held that if some of the grounds for holding the detenu a bootlegger have become irrelevant because the earlier order based on them was quashed by the High Court, the detention order could have been sustained on the remaining grounds which were not suffering from such infirmity namely the fresh grounds which emerged after the quashing of the earlier order of detention and the order of detention could have been treated to have been passed on these valid grounds as per the provisions of Section 6 of the PASA Act. It is not possible for us to consider this argument. We cannot conjecture as to what would have been the decision of the Supreme Court if Section 6 of the PASA Act was cited before the Supreme Court. It is not open to us to undertake that exercise. The ratio of the decision of the Supreme Court on the identical facts situation is binding on us under Article 141 of the Constitution of India. If at all, it will be for the respondents to request the Supreme Court to constitute a larger bench for reconsidering the aforesaid decision in the light of Section 6 of the PASA Act. So far we are concerned, we are bound by the decision of the Supreme Court in *Chhagan Bhagwan Kahar Vs. N.L. Kalna and Others*, . Following the said decision, therefore, this petition will have to be allowed.

10. In the result, this petition is allowed. Rule is made absolute. The impugned order of detention is quashed and set aside. Respondents are directed to set the petitioner at liberty forthwith if not required to be detained in any other case. At the request of Mr. Kapadia, learned counsel for the petitioner, writ of this order shall be sent to the Superintendent, Navsari Sub-Jail, at Navsari where the detenu is at present detained pursuant to the impugned order.