

(2020) 08 GUJ CK 0267

In the Gujarat High Court

Case No : R/Special Civil Application No. 7903 Of 2020

Namdev Krishnabhai More Throu Brother Sopan Krishnabhai More **APPELLANT**

Vs

State Of Gujarat **RESPONDENT**

Date of Decision : 26-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(c), 3(2)
Indian Penal Code, 1860 — Section 114, 294(B), 323, 324, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2020) 08 GUJ CK 0267

Hon'ble Judges : Umesh A. Trivedi, J

Bench : Single Bench

Advocate : O I Pathan, Utkarsh Sharma

Final Decision : Allowed

Judgement

Umesh A. Trivedi, J

RULE. Mr. Utkarsh Sharma, learned AGP, waives service of notice of rule for and on behalf of the respondent - State.

[1.0.] This petition under Article 226 of the Constitution of India is directed against the order of preventive detention dated 25.01.2020 made by the Police Commissioner, Vadodara City, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') whereby, the petitioner has been detained as a 'dangerous person'. The aforesaid order came to be executed upon the petitioner on very same day.

[2.0.] Mr. O. I. Pathan, learned advocate for the petitioner submitted that to brand the petitioner as a 'Dangerous Person' under Section 2(c) of the PASA Act, the authority has relied on three offences registered at (i) C.R.No.I-102/2019

with Sami Police Station, for the offence punishable under Sections, 323, 324, 506(2) and 114 of IPC and Section 135 of the G.P. Act registered on 29.10.2019, (ii) C.R.No.II-204 of 2019 with Sami Police Station, for the offence punishable under Sections 323, 294(b) and 506(2) of IPC registered on 24.11.2019 and (iii) C.R.No.II-177/2019 with Sami Police Station for the offence punishable under Sections 323, 294-B and 506(2) of IPC registered on 28.09.2019. Pursuant to the registration of these offences, the applicant came to be arrested on 17.11.2019 and came to be released on bail vide order dated 19.11.2019 whereas in the second case arrested on 24.11.2019 and released on bail by an order dated 05.12.2019 and in a third case, the applicant came to be arrested on 04.10.2019 and came to be released on bail on 04.10.2019 as reflected from the order of detention. He has also submitted that the registration of offences under the IPC and record of that case simplicitor will not reflect breach of public order. However, he has submitted that mere registration of FIR/s for the offence under the IPC 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. He has submitted that the 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.] It is further submitted that that if the activities of the petitioner were such, he is required to be preventively detained, the authority would have detained him without any further loss of time after offences registered, and therefore, it is submitted that there is delay in passing the order of detention vitiating the subjective satisfaction recorded by the authority. It is submitted that the petitioner is ordered to be released on bail in three cases on 04.10.2019, 19.11.2019 and 05.12.2019 whereas the order of detention has come to be passed on 25.01.2020. In short, it is submitted that the subjective satisfaction of the detaining authority is vitiated on the ground of delay in passing the order independently, if not cumulatively, and therefore, it is required to be set aside.

[4.0.] As against that, Mr. Utkarsh Sharma, learned AGP, 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 the 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 the delay of one and half month cannot be considered to be inordinate delay so as to call for interference by this Court with the order of detention, and therefore, he 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 Mukherejee & 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 order of preventive detention is also required to be set aside on the ground of delay in passing the order of preventive detention. In absence of any reasonable explanation for delay in passing an order of detention, it will always vitiate the subjective satisfaction arrived at by the authority. Last offence alleged to have been committed by the petitioner on 24.11.2019, if the authority to assess the activities of the petitioner based on cases registered, they would not have waited till 25.01.2020 for passing an order of preventive detention. There must be live and proximate link between the objectionable activities and passing of detention order. The unexplained delay of nearly two months from the last offence committed would certainly snap the live link between the order of detention and the purpose for which it has been passed an account of huge, undue and inordinate delay in passing the order of detention.

[8.0.] In view of the above, this petition is allowed. The impugned order of

detention being No.PCB/PASA/DTN/9/2020 passed by respondent No.2- The Police Commissioner, Vadodara City, dated 25.01.2020 is hereby quashed and set aside and the petitioner - detenue is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute.