courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/09/2026

(2023) 01 GUJ CK 0127

In the Gujarat High Court

Case No : R/Special Civil Application No. 25500 Of 2022

Nathabhai Sarmanbhai Mori (Rabari) APPELLANT

Vs

State Of Gujarat RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:
Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(b), 3(2)
Gujarat Prohibition Act, 1949 — Section 65(a)(e), 81, 98(2)

Citation : (2023) 01 GUJ CK 0127

Hon'ble Judges : Vipul M. Pancholi, J;Hemant M. Prachchhak, J

Bench : Division Bench

Advocate : Nipul H Gondalia, Chintan Dave

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Heard learned advocate for the petitioner and learned AGP, appearing for all the respondents, upon instruction.

2. The present petition is directed against order of detention dated 27.11.2022 passed by the respondent – detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the Act") by detaining the petitioner – detenue as defined under section 2(b) of the Act.

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of the offences under Sections 65(a-e), 81, 98(2) etc. of the Prohibition Act by itself cannot bring the case of the detenue within the purview of definition under section 2(b) of the Act. Further, learned advocate for the detenue submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nathabhai-sarmanbhai-mori-rabari-…

and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. Learned advocate for the petitioner submitted that there is a gross delay in passing the impugned order of detention by the detaining authority. It is pointed out from the record that while passing the impugned order of detention, the respondent detaining authority has considered one FIR registered against the petitioner, which was registered on 25.9.2021 and thereafter, impugned order was passed on 27.11.2022 i.e. after period of approximately 14 months. Thus, only on this ground the impugned order of detention may be quashed and set aside.

5. Learned advocate for the petitioner, at this stage, submitted that as the aforesaid FIR was registered against the petitioner on 25.9.2021, he was apprehending that the order of detention is likely to be passed against him and therefore, he preferred the petition being Special Civil Application No. 18049 of 2021 before this Court, however, at that time, the concerned learned AGP, after taking instructions from the detaining authority stated that the detaining authority has not received any proposal for passing order of detention against petitioner and in view of the said instructions, the petitioner withdrew the petition on 13.12.2021. A copy of the said order is produced on record at page 20 of the compilation. Learned advocate for the petitioner therefore, urged that though the aforesaid statement was made before this Court in December 2021, relying upon the very same FIR, now the impugned order is passed on 27.11.2022 and therefore, this Court may quash and set aside the impugned order of detention. Learned advocate for the petitioner also contended that against the co-accused the respondent authority passed the order of detention on 27.11.2022 and in the case of co-accused the respondent State did not approve the order of detention passed by the detaining authority against the co-accused. However, so far as present petitioner is concerned, the respondent State has approved the order of detention and thereby the respondent authorities are taking different views in case of co-accused and therefore, it is urged that this Court may take appropriate steps against the respondent authorities.

6. Learned AGP 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 detenue

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nathabhai-sarmanbhai-mori-rabari-…

indicate that detenue is in habit of indulging into the activity 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 detention order deserves to be upheld by this Court. The State has chosen not to file counter affidavit/ reply so as to disturb the action invoking provisions of the PASA Act. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

7. Having heard learned advocates for the parties and considering the facts and circumstances of the case, it appears that there is gross delay in passing the order of detention i.e. delay of almost 14 months from the date of registration of the FIR. We have also taken into account the decision of the Hon'ble Apex Court in case of Rekha Versus State of Tamilnadu reported in 2011 (5) SCC 244. From the record, it further appears that the detaining authority has misguided this Court and therefore, the petitioner withdrew the petition in December 2021.

8. Further, 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 baring on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of section 2(b) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(b) of the Act. Except general statements, there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the public order. In this connection, it will be fruitful to refer to a decision of the Supreme Court in Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852], where the distinction between 'law and order' and 'public order' has been clearly laid down. The Court observed as follows :

"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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nathabhai-sarmanbhai-mori-rabari-…

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."

In view of above, we are inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention dated 27.11.2022 passed by the respondent – detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted. Registry is directed to send the copy of the order to concerned jail authority through email/fax forthwith.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nathabhai-sarmanbhai-mori-rabari-…