

(2010) 10 GUJ CK 0026

In the Gujarat High Court

Case No : Special Civil Application No. 8144 of 2010

Pradipkumar Ramsamuj Jaiswal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22, 22(5)

Citation : (2010) 10 GUJ CK 0026

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Thakkar Assoc, for the Appellant; Mini Nair, AGP for Respondents 1-3 and M. Iqbal A. Shaikh, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—Present petition has been filed by the Petitioner under Articles 14, 19, 21, 22 and 226 of the Constitution of India and it is prayed inter-alia that the order of detention passed by the District Magistrate, Vadodara dated 07.06.2010 under the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "the Act" for short) detaining the Petitioner may be quashed and set aside on the grounds set out in detail in the memo of petition.

2. Learned Advocate Mr. D.M. Thakkar for the Petitioner submitted that the Petitioner has been detained as per the impugned order dated 07.06.2010 passed by Respondent No. 2 in purported exercise of powers under the Act. However, learned Counsel Mr. Thakkar submitted that raid was carried out on 15.05.2010 and the stock of wheat, rice and blue kerosene was seized on 16.05.2010 and the statements were recorded and thereafter the impugned order of detention has been passed as late as on 07.06.2010. He, therefore, submitted that there is no live link or near proximity of time between the alleged offences and the order of detention and therefore the order is unsustainable. He further submitted that the representations have not been decided nor the

authority has considered the relevant and material fact that the FIR has been filed for the same offence and for the same allegations the Petitioner has been arrested. Therefore, there was no material before the detaining authority to reach to the conclusion that despite the filing of the FIR and arrest of the Petitioner in connection with the said FIR for the same offence, the petition is likely to continue similar activities which would justify the said order of detention. He has emphasized and submitted that in absence of such material and evidence regarding the subjective satisfaction arrived at on the basis of some material, the order is not justified. He has also referred to and relied upon the judgment of the Hon"ble Apex Court reported in the case of Shashi Aggarwal Vs. State of U.P. and Others, Learned Advocate Mr. Thakkar has submitted that the applicant is in the custody and he has not moved the application for bail and there is no reason to believe that he is likely to continue his activity and therefore the impugned order is not justified. He has also referred to and relied upon the judgment of the Apex Court reported in AIR Supreme Court 3675 and submitted that authority must be satisfied that the Petitioner is "likely to indulge in similar activities on the basis of some material." Learned Advocate Mr. Thakkar submitted that the authority has to arrive at such opinion on the basis of material and in absence of any such material with regard to any past cases, the impugned order could not have been passed. He, therefore, submitted that it cannot be said that subjective satisfaction has been arrived at on the basis of the material and therefore the order deserves to be quashed and set aside. It is also submitted that the Petitioner had made two representations both before the State as well as Central Government which have not been decided and it amounts to violation of the right of the Petitioner detenu under Article 22(5) of the Constitution of India.

3. Learned APP Ms. Nair has submitted that the Petitioner has indulged in the activities which are prejudicial to the maintenance of supply of the essential commodities for the distribution to the people. In fact he has resorted to the irregularities by creating the forged bills as revealed from the statements and therefore the order has been passed. She submitted that merely because the FIR has been registered for the same offence, the impugned order is not barred as the possibility of his indulging in similar activities has been considered on the basis of material and therefore present application may not be entertained. Learned APP submitted that there is no delay as the order has been approved on 16.06.2010 and some time was passed as the applicant has not co-operated and was not available for the purpose of further inquiry. Learned APP Ms. Nair submitted that the representation of the detenu was received on 21.07.2010 which was forwarded by the State Government on 03.08.2010 to the Central Government with remarks.

4. In view of the rival submissions, it is required to be considered whether the present petition can be entertained or not. There is no reply affidavit filed and admittedly the raid was carried out on 15.05.2010 and the stock of wheat, rice and blue kerosene was seized on 16.05.2010. The order of detention came to be

passed on 07.06.2010. It is also not in dispute that for the same allegations, FIR being II C.R. No. 29 of 2010 has been registered with Kwat Police Station for the alleged offence under the Act. In other words, the recourse has been taken under the general law. Further, the representations of the Petitioner have not been decided. Therefore, in view of the observations made by the Hon''ble Apex Court in the case of Rajammal Vs. State of Tamil Nadu and Another, the order of detention is required to be quashed and set aside. Moreover, before passing the impugned order, the detaining authority must arrive at the subjective satisfaction on the basis of the objective material. However, as it transpires, no material has been shown that his activities are likely to continue and no such material has been shown that Respondent No. 2 - detaining authority has arrived at the subjective satisfaction on the basis of some cogent material that the Petitioner is likely to indulge in the similar activities again. The mere possibility of his getting out on bail in connection with the FIR lodged for the same allegations under the Act by itself would not be sufficient and there has to be some material for arriving at the conclusion or the satisfaction that he is likely to indulge in similar activities based on some material before the authority. Therefore, as the APP has not been able to satisfy the Court on this aspect, the impugned order deserves to be quashed and set aside.

5. In view of the aforesaid discussion and the rival submissions, the present petition deserves to be allowed and accordingly stands allowed. The impugned order of detention dated 07.06.2010 passed by Respondent No. 2 - District Magistrate, Vadodara is hereby quashed and set aside and the Petitioner detenu is ordered to be set at liberty forthwith if not required to be detained in any other case. Rule made absolute accordingly. Direct service permitted.