

(2018) 01 GUJ CK 0054
In the Gujarat High Court
Case No : 22179 of 2017

PRAKASHKUMAR AMRATLAL RAVAL

APPELLANT

Vs

STATE OF GUJARAT & ORS

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 110](#), [Section 107](#) - Security for good behaviour from habitual offenders - Security for keeping the peace in other cases
[Indian Pena](#)

Citation : (2018) 01 GUJ CK 0054

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : BINITA J DAVE, DHARMESH C GURJAR, REKHABEN C GURJAR, NIRAJ ASHAR

Judgement

1. This petition is directed against the order of detention dated 31.10.2017 passed by the respondent no.2 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 detainee as a dangerous person as

defined under section 2[c] of the Act.

2. Learned advocate for the detainee submits that the order of detention impugned in this petition deserves to be quashed and set aside on the

ground that the registration of two offences by itself cannot bring the case of the detainee within the purview of definition of dangerous person under

Section 2[c] of the Act. Learned counsel for the detainee further submits that the illegal activity carried out as alleged, cannot have any nexus or

bearing with the maintenance of the public order and at the most it can be said to be breach of law and order. Further, except statements of

witnesses and registration of FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detinue with breach of the public order.

3. Learned counsel for the detinue, placing reliance on the decisions reported in the cases of [i] Ranubhai Bhikhabhai Bharwad [Vekaria] v. State

of Gujarat reported in 2000[3] GLR 2696, [ii] Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat reported in 2000[1] GLH

393; and [iii] Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, reported in [1995] 3 SCC 237, submitted that the case on hand is squarely

covered by the ratio laid down in the aforesaid decisions. Learned counsel for the detinue further submits that it is not possible to hold in the facts

of the present case that the activities of the detinue with reference to the criminal cases had affected even tempo of the society, posing a threat to

the very existence of the normal and routine life of the people at large or that on the basis of the criminal cases, the detinue had put the entire social

apparatus in disorder, making it difficult for whole system to exist as a system governed by the rule of law by disturbing the public order.

4. Learned AGP for the respondent - State supported the detention order passed by the authority and submitted that the detinue is a dangerous

person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detinue, indicating that the

detinue is in habit of indulging into activities as defined under Section 2[c] of the Act and considering the facts of the case, the detaining authority

has rightly passed the order of detention and the detention order deserves to be upheld by this Court.

5. Having heard the learned counsel for the 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

FIRs cannot have any bearing on the public order since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient

enough to take care of the situation and that the allegations as have been levelled against the detinue cannot be said to be germane for the purpose

of bringing the detinue as a dangerous person within the meaning of section 2[c] of the Act and, unless and until the material is there to make out a

case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the

whole social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a dangerous person

within the meaning of Section 2[c] of the Act. Except general statement, 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 view of the ratio laid down by the Honble Supreme Court in the cases of [i] Ranubhai

Bhikhabhai Bharwad [supra], [ii] Ashokbhai Jivraj @ Jivabhai Solanki [supra] and [iii] Mustakmiya Jabbarmiya Shaikh [supra], the Court is of the

opinion that the activities of the detenue cannot be said to be dangerous to the maintenance of public order and at the most fall under the

maintenance of law and order. Further, there are serious allegations against the petitioner. On perusal of the jail record it seems that police has not

taken proper care in investigating offences and petitioner was arrested only on presumption and therefore I do not see any reason to detain the

petitioner by confirming the detention order. However, it is made clear that this order will not influence the trial in any manner.

6. In view of the above, I am inclined to allow this petition because simpliciter registration of FIRs by itself cannot have any nexus with the breach

of maintenance of public order and the authority can take recourse under the Indian Penal Code and no other relevant or cogent material exists for

invoking powers under Section 3[2] of the Act.

7. If we peruse the citations, it becomes clear that even the Hon'ble Supreme Court has considered that detention is not permitted even in the case

of robbery and theft. The present case is under Sections 323, 324, 294 (c), 506 (2) and 114 of the Indian Penal Code and Sections 3(1)c, 3 (2)5

of Atrocity Amendment Act. Moreover, the competent authority has assigned such a reason that since they are unable to take action under

sections 107 and 110 of the Criminal Procedure Code [Cr. P.C.], they are detaining the detenue. Unfortunately and surprisingly the authority has

disclosed in the impugned order that they do not believe in taking action under sections 107 and 110 of the Cr. P.C and instead of following such

rule of law, they selected to pass an order of detention. Therefore, the Court has no option but to allow the petition.

8. It is generally seen that though some of the accused are repeatedly detained on different occasions for different offences, only because of

nondisclosure of proper information and in all such detention orders, such orders are generally quashed and set aside by the Court. It is also seen

that because of quashing of previous detention order, competent authority could not consider the grounds of detention under such order which is

already quashed as a ground for detention for subsequent offences by the same detainee. However, when competent authorities are not abiding by

all other cited cases while passing the order of detention based upon two offences, it is surprising to note that at no point of time they have

challenged the observation of any Court that when previous order of detention has been quashed, it cannot be considered in subsequent detention.

It goes without saying that if a particular detainee continues to commit the similar offence repeatedly, and if he is required to be detained repeatedly

then at least at some point of time, the competent authority shall compile all the information and shall consider it for fresh detention order as and

when necessary and shall produce all such information before the Court so as to avoid the quashing of such detention order. If competent authority

fails to take up such exercise and when in impugned order of detention all such facts were not disclosed or considered for passing such order, the

detention order is required to be dealt with as it is without considering the additional disclosure in affidavit-in-reply by the respondents.

8.1 In the present case, it seems that petitioner has been detained several times but at present, the detention order under challenge does not

disclose all such facts so as to enable the petitioner to properly represent his case. Hence, there is no option but to consider that present order of

detention is solely based upon two offences. Therefore, considering the settled legal position that no person can be detained for two offences.

8.2 In view of above facts and circumstances, it would be necessary to observe that the competent authority is not precluded from disclosing all

material facts while detaining the petitioner if so required for any offence that he might commit hereinafter. In other words, though impugned order

is quashed and set aside at present, it would not come in way of the competent authority for quoting such FIR and order of detention, thereby to

treat petitioner as a habitual offender in case of commission of offence repeatedly.

8.3 No doubt, neither the possibility of launching of a criminal proceedings nor pendency of any criminal proceedings is an absolute bar to an order

of preventive detention. But, failure of the detaining authority to consider the possibility of either launching of or pendency of criminal proceedings

may, in the circumstances of a case, lead to the conclusions that the the detaining authority has not applied its mind to the vital question as to

whether it was necessary to make an order of preventive detention. Since there is an allegation that the order of detention is issued in a mechanical

manner without keeping in mind whether it was necessary to make such an order when an ordinary criminal proceedings could well serve the

purpose. The detaining authority must satisfy the court that the question too was borne in mind before the order of detention was made. In the case

on hand, the detaining authority failed to satisfy the court that the detaining authority so bore the question in mind and, therefore, the court is

justified in drawing the inference that there was no application of mind by detaining authority to the vital question of whether it was necessary to

preventively detain the detainee. It is also fruitful to refer to the decision of the Honble Apex Court rendered in the case of Rekha V/s. State of

Tamil Nadu through Secretary to Government and another reported in (2011)5 SCC 244 wherein, it is observed by the Honble Apex Court that if

a person is liable to be tried, or is actually being tried for a criminal offence but the ordinary criminal law will not be able to deal with the situation,

then and only then, preventive detention can be taken recourse to.

9. The petitioner has argued on merits of FIRs, referring certain judgments. However, discussion of such facts, prima facie at this stage, is not

warranted since it may otherwise prejudice the trial.

10. However, since all such orders are quashed on technical grounds, the same shall not come in the way of the Detaining Authority to pass an

appropriate order in future.

11. In the result, the petition is allowed. The order of detention dated 31.10.2017 passed by the respondent no.2 is quashed and set aside. The

detainee is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute accordingly. Direct service

permitted.