

(2021) 04 GUJ CK 0074

In the Gujarat High Court

Case No : /Special Civil Application No. 14088 Of 2020, 1398, 1684, 2468, 3202
Of 2021, Civil Application (For Stay) No. 1 Of 2021

Pramodkumar Harilal Vishvakarma Through Mukeshbhai
Udaybhai Vishvakarma

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-04-2021

Acts Referred:

Gujarat Prevention Of Illegal Mining Transportation And Storage Rules, 2017 — Rule 3
Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2, 2(b), 3(2)
Gujarat Prohibition Act, 1949 — Section 65(a)(e), 81
Indian Penal Code, 1860 — Section 186, 323, 332, 341

Citation : (2021) 04 GUJ CK 0074

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Rafik Lokhandwala, Krutik Parikh, Ruturaj Nanavati, Dhawan
Jayswal, Aditya Parikh, Krutik Parikh, R.Atit Thakore, .Dhawan Jayswal,
R.D.Dave, Dhawan Jayswal

Final Decision : Allowed

Judgement

Biren Vaishnav, J

ORAL ORDER in SCA 3202 of 2021 and SCA 2468 of 2021 with CA 1/2021

Heard learned advocate Mr.Ruturaj Nanavati and learned advocate Mr.Rafik Lokhandwala for the respective petitioners and learned AGPs for the

State.

It is undisputed that in context of the same FIR, this Court by an order dated 16.04.2021 passed in SCA No.4896 of 2021 has released the co-detenuue.

The relevant paragraphs of the order read as under:

5. Having heard learned advocates 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 FIR/s cannot have any bearing 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 detainee cannot be said to be germane for the purpose of bringing the detainee 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 detainee 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 detainee 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 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.â??

6. In view of above, I am inclined to allow this petition, because simplicitor registration of FIRs 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 dated 13.01.2021 passed by the respondent â?" detaining authority is hereby quashed and set aside.

The detainee is ordered to be set at liberty forthwith if not required in any other case.

7. Rule is made absolute accordingly.

Hence, in view of the above order passed, both these petitions are allowed. The detention order impugned in the present petitions are quashed and set aside. The detainee- petitioners are ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute.

In view of the disposal of SCA 2468 of 2021, Civil Application No.1/2021 will also not survive and hence, the same is also disposed of.

ORAL ORDER in SCA 1398 of 2021

Mr.Krutik Parikh learned AGP for the State states that the order of detention has already been revoked on 15.03.2021.

In view of this, the petition will not survive and the same is disposed of. Notice is discharged.

ORAL ORDER in SCA 1684 of 2021

Heard learned counsels for the respective parties through Video Conferencing.

The present petition is directed against order of detention dated 01.02.2021 passed by the respondent â?" detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short â?"the Actâ?) by detaining the petitioner â? detainee as defined under section 2 of the Act.

This Court has rendered a decision vide order dated 2.3.2020 in Special Civil

Application No.20867 of 2019 which reads as under:

1. Heard learned advocates appearing for the respective parties.

2. The present petition is directed against order of detention dated 29.10.2019 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 offences under Sections 65(a)(e), 81, 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 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 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 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.

5. Having heard learned advocates 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 FIR/s cannot have any bearing 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 detainee cannot be said to be germane for the purpose of bringing the detainee 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 detainee 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 detainee 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 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.â??

6. In view of above, I am 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 detention order dated 29.10.2019 passed by the respondent â?" 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. Direct service is permitted. Rule is made absolute accordingly.

7. The Registry is directed to communicate this order to the concerned jail authority by Fax and / or E-mail.â??

In view of above, since the case of the petitioner is also similar to the petitioner of the above order, I am 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 detention order dated 01.02.2021 passed by the respondent â?" detaining authority is hereby quashed and set aside in each petition. The detenue-petitioners are ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. The Registry is directed to communicate this order to the concerned jail authority by Fax and / or E-mail.

ORAL ORDER in SCA 14088 of 2020

Heard learned advocate Mr.R.D.Dave for the petitioner and learned AGP for the State.

The petitioner has been arraigned as an accused in I-C.R.No.1184002200788/2020 under Sections 186, 323, 332, 341, etc. of IPC read with Section 3

of Gujarat Prevention of Illegal Mining Transportation and Storage Rules 2017.

Mr.Dave has relied on the orders passed by this Court in SCA No.15452 of 2020 and allied matters. The relevant paragraphs of the order read as

under:

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds that the

detaining authority has exercised the powers, treating the petitioner as a "dangerous person" within the meaning of Section 2(c) of

the Act. The FIR, which is the basis to treat the petitioner as such a person is referred to in the impugned order and further details in that

regard are on record. Said FIR and other material which is on record is considered by this Court. On conjoint consideration thereof it

transpires that, the detaining authority fell in error in treating the activities of the petitioner as prejudicial to the maintenance of the public

order. The distinction between "the law and order" as "the public order" needs to be kept in mind, in view of the decision of the

Supreme Court of India in the case of Pushker Mukherjee v/s. State of West Bengal reported in AIR 1970 SC 852. The impugned order, on

facts, fails on this test. The impugned order therefore needs to be quashed and set aside. It is noted that, in the grounds of the detention, the

detaining authority has recorded to the effect that, according to him, the activities of the petitioner create a sense of alarm and feeling of

insecurity in the minds of public at large, however on weighing this vis-a- vis the material on record, this Court finds that, the citation of

such words is more in the nature of rituals rather than with any significance to the alleged activities of the petitioner. In totality, this Court

finds that, the impugned order is unsustainable and needs to be quashed and set aside.

5. For the reasons recorded above, the following order is passed. 5.1 This petition is allowed.

5.2 The impugned order passed by the District Magistrate, Chhotaudaipur, dated 28.07.2020 is quashed and set aside.

5.3 The petitioner / detainee is ordered to be set at liberty forthwith, if not required in any other case.

5.4 Rule is made absolute in above terms.

5.5 Registry to communicate this order by way of FAX / E- mail to the concerned

Authority.

6. In view of above, Civil Application would not survive and is disposed of accordingly.

Direct service is permitted.

In view of the reasonings of the order dated 28.01.2021, the order of detention dated 20.07.2020 is quashed and set aside. The detenue-petitioners are ordered to be set at liberty forthwith if not required in any other case. The petition is allowed. Rule is made absolute.