

(2020) 08 GUJ CK 0215
In the Gujarat High Court

Case No : R/Special Civil Application No. 8792 Of 2020

Sagar Alias Joli S/O Rameshbhai Maru Throu Friend
Shaileshbhai Kishorbhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-08-2020

Acts Referred:

Gujarat Prevention Of Anti Social Activities Act, 1985 — Section 2(b), 2(c), 3(2)

Citation : (2020) 08 GUJ CK 0215

Hon'ble Judges : A.G.Uraizee, J

Bench : Single Bench

Advocate : Gajendra P Baghel, Shoham Joshi

Final Decision : Allowed

Judgement

A.G.Uraizee, J

1. The present petition is directed against order of datention dated 18.01.2020 bearing No. PCB/PASA/DTN/30/2020 passed by the respondent No.2 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(c) of the Act.

The petitioner is detained since 18.01.2020

2. Heard Mr. Gajendra Baghel, learned advocate for the petitioner and Mr. Shoham Joshi, learned AGP for the respondents.

3. Mr. Baghel, learned advocate for the petitioner vehemently submits that the petitioner came to be released on regular bail by the competent Court. He submits that the impugned order of detention deserved to be quashed and set aside on the ground that the petitioner is detained under PASA on the basis of registration of two offences under the provision of Indian Penal Code. It is his submission that mere registration of FIR in respect of offence under IPC would

not bring the petitioner within the purview of "Dangerous Person" as defined under Section 2(b) of PASA Act. He further submitted that the alleged illegal activities do not have any nexus or bearing with the maintenance of public order. According to his submission the alleged illegal activities of the petitioner can be said to be breach of law and order. He would also submit that the alleged activities of the petitioner can not be said to have affected the even tempo of society and that they prejudicial to maintenance public order, and therefore also the detention of the petitioner under the PASA is bad in law.

4. Mr. Shoham Joshi, learned AGP has supported the impugned detention order. she submits that sufficient material and evidence was found during the course of investigation, which was also supplied to the detinue indicate that detinue is in habit of indulging into the activity 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 detention order deserves to be upheld by this Court.

5. The constitution of bench of Supreme Court has an occasion to consider the distinction between "public order" and "law and order" in the case of Dr. Ram Manohar Lohiya v. State of Bihar and anothers, (1996) 1 SC 709 wherein it is held as under:

"....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(I)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State...."

6. The Supreme Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and other, AIR 2003 SC 971 has observed as under:

"The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1000/-. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that the case of 'Goonda' the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention."

7. It is an undisputed fact that the petitioner is detained under PASA as a dangerous person as defined under Section 2(c) on the basis of one criminal case registered against it for commission for offence under IPC. It further appears from detention order that the petitioner is released on bail by the competent Court. Moreover, as could be seen from the detention order that one of the FIRs was registered with Adajan Police Station on 15.07.2018, whereas other one was registered with Chawk Bazar Police Station on 14.11.2019. It is thus clear that there is no live link between FIR registered in the year 2018 and the detention order. I am therefore, of the opinion that the detention order suffers from vices of non-application of mind on the part of the detaining authority.

8. The petitioner, who has been detained under PASA as dangerous person on the basis of FIRs registered against him can at most said to be disorderly behaviour on his part and to some extent the peace prevailing in the locality and it may also affect law and order but surely it cannot be said that such an activity of the petitioner would affect maintenance of public order. The order of detention, therefore, though cannot be sustained and deserves to be quashed and set aside.

9. For the foregoing reasons, the petition succeeds and is hereby allowed. The impugned order dated 18.01.2020 bearing No. PCB/PASA/DTN/ 30/2020 passed by the respondent No.2 detaining authority is hereby quashed and set aside. The petitioner is order to be set at liberty forthwith if not required in any other case. Rule is made absolute. The registry is directed to communicate this order to be respondent authorities by Email/ Fax forthwith.