
(1987) 12 GUJ CK 0002
In the Gujarat High Court

Salim Rajmahmad Pathan

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 15-12-1987

Acts Referred:

Constitution of India, 1950 — Article 21, 21

Citation : (1988) 2 GLR 886

Hon'ble Judges : B.S. Kapadia, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—On being satisfied that the petitioner's activity was prejudicial to the maintenance of public order in the area of Surat City, the Commissioner of Police, Surat, passed an order of detention dated June 11, 1987 under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"). From the grounds of detention served upon the detenu it appears that the Sponsoring Authority placed material before the Police Commissioner, Surat. The material placed before him disclosed that the petitioner was running liquor dens at Udhna Road No. 2 and at "Gala Ghanti" locality of Surat City. That he was engaging servants to run the dens and that the prohibited liquor was being openly sold in public places. That people used to purchase the prohibited liquor from these places and consume the same on public road. On account of this situation it became difficult for female folks to pass through that locality and the people who consumed liquor misbehaved with girls and ladies passing through the road.

2. Details of cases under the Bombay Prohibition Act instituted against the petitioner/detenu have been mentioned in the grounds of detention. Between 1984 to 1986 as many as five cases were instituted against the petitioner/detenu and they were pending in the Court. In seventeen prohibition cases, mentioned in the grounds of detention, persons engaged by the detenu to run the liquor dens have been involved. Statements of five persons have been recorded, three of them are members of public and two of them are Police Constables. From the

statements of the witnesses, it appears that whenever some person tried to intervene or give some instruction with regard to the improper behaviour of the people who consumed alcohol and misbehaved on public road, the detenu ill-treated them. From the statements of Police Constables Shri Sudhakar Pandurang and Shri Damu Gosalia it appears clear that the detenu engaged as many as twelve servants for running liquor dens. It also appears that mother of the detenu (Sandalbibi) and the wife of the detenu were also involved in some of the prohibition case". On the basis of the material placed before the detaining authority, he came to the conclusion that the activity of the petitioner/detenu was prejudicial to the maintenance of public order and, therefore, it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Surat City. Hence, the order of detention dated June 11, 1987 produced at Annexure "A" to the petition which has been served upon the petitioner on the same day. The grounds of detention are also served on the same day.

3. As per the committal order dated June 11, 1987, the Commissioner of Police, Surat, directed that the petitioner be detained at Bhavnagar District Jail and he be treated as Class II detenu. The order of detention was served upon the petitioner on the same day i.e. on June 11, 1987 at Surat City. He was taken to Bhavnagar District Jail on June 13, 1987. He was there upto October 19, 1987, on which date he was transferred to Vadodara Central Prison. Be it noted that he had requested the authorities to transfer him to Surat Jail or Navsari Jail but the Government did not accede to this request and instead ordered to transfer him to Baroda Central Prison. The petitioner's brother has been informed about the transfer of the detenu to Baroda Central Prison by letter dated October 21, 1987 written by the office of the Commissioner of Police, Surat.

4. The learned Counsel appearing for the petitioner submitted that the principles laid down by the Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, , have not been complied with inasmuch as the relatives of the petitioner have not been informed about the detention of the petitioner. Therefore, the procedure adopted by the detaining authority while detaining the petitioner/detenu in custody is not just, fair and reasonable. Hence it is submitted that the petitioner/detenu should be set at liberty. The learned Counsel for the petitioner has relied upon the observations made by the Supreme Court in paras 74 and 75 of the aforesaid judgment. This decision had come up for consideration before us on earlier occasion while deciding Special Criminal Application No. 732 of 1987 decided on 21-11-1987 Rajendrakumar Natwarlal Shah Vs. State of Gujarat and Another, . In that decision we have observed as follows:

Reading the Supreme Court decision in the light of the aforesaid observation, the underlying principle in the case of A.K. Roy, (supra) is that a citizen, even while in detention, under preventive detention law, continues to enjoy all other fundamental rights. His right to liberty and essentially that of free movement, is

curtailed. The deprivation of liberty also should be in accordance with law. The procedure followed cannot be unjust, unfair or unreasonable. The criterion for judging the "just, fair and reasonable" procedure is that it should be consistent with human dignity and civilized norms of behaviours. In this context, it should be evident that "written information" about the arrest of the detenu to his family members is merely an index of civilized norm of behaviour. The emphasis is not on written information. The emphasis is on civilized and human treatment of the detenu. The treatment of the detenu must be dignified and civilized. He is not to be treated as a subject of a monarch. He is to be treated as a citizen of democratic, secular socialist Republic. Examined from this angle, there is no particular virtue in written information to family members. In a given case, even when there is a written information to family members of the detenu, regarding his arrest and detention, it can be shown that he has not been provided with just and reasonable procedure. Similarly, in absence of written information, it can be shown otherwise also. Ultimately, this depends upon the facts of each case. Thus, the correct ratio of the judgment of the Supreme Court is that procedure should be fair, just and reasonable which should conform to the mandate of Article 21 of the Constitution of India. That is of the prime importance. With a view to achieving that objective the observation is made by the Supreme Court that family members of the detenu should be informed of the passing of the order of detention. Whether in writing or orally, if the family members of the detenu are informed the procedure that has been followed is just, fair and reasonable. Hence, it cannot be said that it would not conform to the mandate of Article 21 of the Constitution of India merely because intimation is given orally and not in writing.

As observed by us, there is no virtue in insisting upon written information to the detenu. What is important is that the procedure attendant upon the detention should conform to the mandate of Article 21 of the Constitution of India. This requires that the procedure of detention should be fair, just and reasonable. Written information is merely an index of just, fair and reasonable procedure. If there is a written information to the family members of the detenu it can be immediately shown that the procedure adopted while detaining the person concerned is just, fair and reasonable. But this can be shown otherwise than by producing written document also. Written document would serve as a good piece of evidence of such procedure having been adopted. But that would not be an end of the matter. Despite the written information it can be shown by the detenu that the procedure adopted by the detaining authority is neither just, fair and reasonable nor it is consistent with the human dignity and civilized norms of behaviour. Similarly, even in absence of written information to the family members of the detenu it can be shown by the detaining authority that the procedure adopted by it was just, fair and reasonable. Therefore, ultimately the question is boiled down to the facts and circumstances of each case. On facts of each case, it is to be adjudged whether just, fair and reasonable procedure has been adopted or not.

5. In the case of Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746 (para 3) the Supreme Court has held that, "it is for the Court to decide in the exercise of its Constitutional power of judicial review whether "the deprivation or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise." In the case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , the aforesaid observations have been approvingly quoted by the Supreme Court itself. Therefore, in view of this settled legal position, mere presence or absence of written information to the family members of the detenu, cannot lead to the conclusion that the procedure adopted by the detaining authority is unjust, unfair and/or unreasonable. In this view of the matter, the facts of the case are required to be examined.

6. In para 8(c) of the petition, it is alleged that the petitioner was detained, when he was passing on the road leading from Marutinagar to Mithakhali Road and his family members were not informed about his arrest pursuant to the order of detention. It is also contended that family members have not been informed regarding his transfer to Bhavnagar District Jail. Therefore, it is contended, that in absence of written information to the family members of the detenu, the fundamental rights guaranteed under Article 21 of the Constitution of India is violated inasmuch as the procedure established by law has not been followed and hence petitioner's continued detention should be set aside.

7. The aforesaid averments have been denied in the affidavit-in-reply filed by the detaining authority i.e., Commissioner of Police, Surat City as well as by the Police Inspector Shri V.N. Desai, who executed the order of detention. It transpires from these affidavits that the Police Commissioner Shri P.K. Bansal had asked Police Sub-Inspector Shri V.N. Shevale to produce the petitioner with his family members at D.C.B. Police Station. Accordingly Shri Shevale had brought the detenu alongwith Smt. Sandalbibi, the mother of the detenu at D.C.B. Police Station. There the petitioner was detained at about 11-00 p.m. on 11-6-1987. The detaining authority has also averred that the mother of the detenu was explained that the detenu was being taken to Bhavnagar District Jail and he can be given private food and clothes, if so desired. Similar is the averments made by Shri V.N. Desai, Police Inspector; in his affidavit dated 30th November, 1987. He has also referred to an endorsement below the committal order which has been written by him at 23.15 hours on 11-6-1987. The endorsement shows that mother of the detenu was informed about the detention of the petitioner and was also explained that he was to be taken to Bhavnagar District Jail and private food and clothes can be supplied to him.

8. Learned Counsel for the petitioner submitted that the endorsement is only in the office copy of the committal order and no signature or thumb impression of Smt. Sandalbibi and/or that of the detenu has been obtained below the endorsement. Therefore, the same should not be believed. The argument cannot be accepted for the simple reason that the entire case file containing the proposal for detention of the petitioner was forwarded by the Sponsoring

Authority to the Detaining Authority, i.e., Commissioner of Police. Thereafter the office copy of the detention order as well as that of the committal order remained in the office of the Police Commissioner. The file did not remain in possession and control of the Police Inspector who has served the order of detention and the committal order. This position becomes evident on the examination of the file. If we accept the arguments advanced by the learned Counsel for the petitioner we will have to infer, by necessary implication, that the Police Commissioner himself parted with the file and allowed the Police Inspector to make ante dated endorsement subsequently. There is no warrant for such an inference. Drawing such inference would amount to holding that the Police Commissioner conspired with or connived at the creation of false document. This cannot be believed without there being cogent reasons for the same. Moreover, that is not even the case of the detenu.

9. In this connection it may be noted that what is stated by the Police Commissioner and the Police Inspector is supported by contemporaneous record while there is nothing to show that what is stated by Smt. Sandalbibi is correct. Again the important circumstance in such cases is not the presence or absence of written information. The crucial point is: what is the kind of treatment meted out to the detenu? It is not even the case of the petitioner/detenu that he has not been treated with human dignity and civilized norms of behaviour. On the contrary, the facts are otherwise. In the committal order itself it has been stated that the detenu shall be treated as Class II detenu. It is not even avered in the petition that the treatment of the detaining authority was in any way harsh, unreasonable, unjust or unfair. Three brothers of the detenu had visited Bhavnagar District Jail and had taken interview of the petitioner/detenu within a week's time after his detention at Bhavnagar District Jail. On June 22, 1987 there was an application submitted to the Jail authorities that the petitioner-detenu be permitted to be served the food from outside. And tiffin facility, as a matter of fact, was permitted. This shows that family members had information regarding the detention of the petitioner. Therefore it has to be inferred that at the time of arrest of the petitioner, mother of the detenu Smt. Sandalbibi must have been informed by the detaining authority. Otherwise it would not have been possible for the members of the family to go to Bhavnagar within a period of one week's time and make necessary arrangements for private food and other facilities for the detenu.

10. Again, some time in the month of October, 1987 petitioner's request for transfer of Jail from Bhavnagar to Surat or Navsari has been considered by the Government. The Government directed that he be detailed in Baroda Central Prison. Information of this transfer has been given in writing by the office of the Police Commissioner, Surat to the mother of the detenu on October 21, 1987. This also shows that, right from the beginning the treatment meted out by the detaining authority to the petitioner/detenu is consistent with human dignity and civilized norms of behaviour. Therefore, in the facts and circumstances of the case it can never be said that there is violation of principles laid down under the

provisions of Article 21 of the Constitution of India. Hence it is not possible to agree with the contentions raised by the learned Counsel for the petitioner that the procedure attendant upon the detention of the petitioner was unjust, unfair and unreasonable. In above view of the matter, the contention raised by the learned Counsel for the petitioner that there is violation of principles laid down under Article 21 of the Constitution of India is rejected.

11. The learned Counsel for the petitioner submitted that the detaining authority has not considered the fact that in 10 prohibition cases (which have been mentioned at page 61 of the compilation) the petitioner himself is not at all involved in any of them. Had the detaining authority been aware of this fact and had he considered this fact, he would not have arrived at the necessary satisfaction for detaining the petitioner. Therefore, it is submitted that the satisfaction arrived at by the detaining authority is vitiated. Hence the order of detention requires to be quashed and set aside. The submission is not well founded. In the grounds of detention itself these prohibition cases have been referred to. Therein it is clearly mentioned that the petitioner's servants who were selling liquor or who were found in possession of the prohibited liquor were arrested for the offence alleged against them.

It is not mentioned in the grounds of detention that the petitioner himself was involved in these cases. The detaining authority is very much aware of the fact that in these cases the petitioner himself has not been involved. It is clearly mentioned that servants engaged by the petitioner were found in possession of the prohibited liquor and, therefore, they were arrested. Therefore, the contention raised by the learned Counsel for the petitioner that the detaining authority ought to have considered that the petitioner was not involved in the aforesaid cases has no factual basis. Be it noted that in the statements of Shri Sudhakar Pandurang and that of Damu Gosalia it is in terms mentioned that the petitioner engaged as many as twelve servants for running liquor dens. The names of these servants have been mentioned in their statements. If one refers to the FIR of cases mentioned at page 61 of the compilation it becomes clear that these cases are against the servants of the petitioner. Therefore, by no stretch of reasoning it can be said that the detaining authority has left out from his consideration certain relevant aspects and/or has taken into consideration something which was extraneous or irrelevant. In above view of the matter, this contention has got to be rejected.

12. The learned Counsel for petitioner submitted that on the basis of the material relied upon by the detaining authority it can never be said that there was breach of public order. At the most the material placed before the detaining authority disclosed that on account of the activity of the detenu some incidents affecting the law and order might have occurred. But there is no question of breach of public order. Therefore, it is submitted that the order of detention should be quashed and set aside and the petitioner/detenu should be released. The contention may be examined.

13. Witness Balubhai Chhanabhai in his statement dated June 8, 1987 has stated that he knew the detenu very well. That the detenu was running two liquor dens on Udhna Road No. 2 and at "Gola Ghanti". That whenever Police raided the liquor dens he apprehended that certain persons had given information to the Police and, therefore, he would harass such innocent persons. The witness has narrated his own experience of October 3, 1986. When he was passing through that locality at about 10-30 p. m. he had an encounter with the detenu near the Railway Station. The detenu has threatened the witness and had given first blows. By showing Rampuri knife the detenu told him that if he were to give information to the Police again, he would be killed. On being threatened, he was very much frightened. Therefore, he had run away and people in that locality had also run helter-skelter and there was traffic jam also.

14. In the statement of witness Mahesh Ramanlal dated 6-6-1987 he has stated that the detenu runs his liquor dens at "Gola Ghanti" area and at Udhna Road No. 2. That on March 13, 1987, at about 6.00 O'clock in the evening, when he was passing through Udhna Road No. 2 one boy aged about 10 years has come on a bicycle for purchase of liquor. At that time the witness told the detenu that it would be better that he may shift his liquor dens to other place and he may prevent to associate such young boys of tender age in his activity. Thereupon the detenu had got enraged and had beaten the witness with a hockey stick. On account of this incident people had closed their shops and had run helter-skelter and there was traffic jam.

15. Statement of witness Saiyed Sattar was recorded on 5-6-1987. He has also revealed similar story. In his statement he has referred to an incident of 6-5-1987 and has stated that the detenu was engaging other persons as his servants to run the liquor dens. He has also stated that people gather together at the liquor dens for consuming prohi-bited liquor. They misbehave on public road in drunken condition so much so that some of them put off their clothes and create ugly scenes. On account of such situation it becomes difficult for female folks to pass through the road. He has also referred to an incident wherein a woman was teased by the people who had drunk prohibited liquor. On seeing this incident the witness had told the detenu that liquor should not be sold in public because on that count females were not in a position to freely move through that locality. Hence the detenu had got enraged and the witness was severely beaten. On account of this incident also the even tempo of life in that locality was disturbed.

16. In the statement of Sudhakar Pandurang recorded on 8-6-1987, he has stated that two liquor dens are being run by the detenu at Udhna Road No. 2 and "Gola Ghanti" area. He has also stated the names of the servants engaged by the detenu in his business. He has also stated that because liquor dens are being run by the detenu it has become impossible for female folks to pass through that locality. He has also stated that certain innocent persons are being beaten by the detenu on the apprehension that they are giving information to Police.

17. Similar is the statement dated 8-6-1987 given by Damu Gosalia. Shri Sudhakar Pandurang and Shri Damu Gosalia are Police Constables.

18. The aforesaid material taken together with the details of prohibition cases instituted against the petitioner and his servants, clearly reveal that liquor dens are being run openly in public place. At the liquor dens may people come and they consume liquor publicly on public road. After consumption of liquor they are misbehaving and if anyone tries to intervene, he is beaten or he is threatened with dire consequences. If such activity is being carried on persistently it can never be said that the extent and reach of incidents which occur on account of aforesaid activity would not disturb by the even tempo of public life in that area. In such cases the test to be applied is as to what is the effect of disturbances that is being created on account of such incidents. In the instant case, it appears clear that the liquor dens are being carried on publicly at public places. On account of this activity, the entire life of the people residing in that area gets disturbed.

Therefore, it is clear that the activity of the detenu leads to breach of public order. Hence it cannot be said that the material placed before the detaining authority did not disclose any question of breach of public order.

19. No other contention is raised.

20. We do not find any substance in any of the contention raised on behalf of the petitioner/detenu. Therefore, the petition requires to be rejected.

21. In the result, the petition is rejected.