

(2010) 03 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 12995 of 2009

Sanjay @ Vijay

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 227

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(1)

Citation : (2010) 03 GUJ CK 0046

Hon'ble Judges : H.B. Antani, J

Bench : Single Bench

Advocate : A.R. Shaikh, for the Appellant; Trusha K. Patel, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.B. Antani, J.—By filing this writ petition under Article 227 of the Constitution of India, the detenu has challenged the order of detention

No. PCB/PASA/219/2009 dated 29.09.2009 passed by the Commissioner of Police, Surat City, respondent No. 2, in exercise of powers under

Sub-section (1) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as the PASA Act] detaining the

detenu as a bootlegger, as being illegal, invalid, arbitrary, void ab-initio and suffers from total non-application of mind and also in violation of the

provisions of Articles 21 and 22 of the Constitution of India.

2. Learned advocate for the detenu, Mr. A.R. Shaikh, submitted that the grounds of detention do not indicate any satisfaction recorded by the

detaining authority that the activities of the detenu are detrimental to "public order", and, therefore, the detention order is bad and illegal. He further

submitted that the detaining authority has placed reliance on a solitary case under the Prohibition Act but the same do not indicate anything to

support disturbance to "public order". He further submitted that the offence was registered as back as 18.09.09, the detenu was arrested on the

same date, he was released on bail on 21.09.09, and the detention order was passed on 29.09.2009. Learned advocate therefore submitted that

there is a delay in passing the order of detention and on this ground also, the detention order requires to be quashed and set aside. Learned

advocate further submitted that on behalf of the detenu, a representation was submitted by registered AD Post on 17.11.2009, but the same has

not been considered by the respondents and on this ground also, the continued detention of the detenu requires to be quashed and set aside.

3. Ms. Trusha Patel, learned AGP submitted that the detention order is just and proper and detaining authority has passed the order after

considering all relevant aspects of the matter, and the same needs no interference.

4. Heard learned advocate Mr. Shaikh for the detenu and Ms. Trusha Patel, learned AGP for the respondents. I have also perused the records.

5. It appears that on the basis of a solitary case, viz. C.R. No. III - 861 of 2009 dated 18.09.2009 registered at Salabatpura Police Station for

744 bottles of foreign liquor against the detenu, the detaining authority held that the said activities of selling liquor of the present detenu were

harmful to the health of the public, and to restrain from carrying further illegal activities, the detenu has been detained. It further appears that the

offence was registered on 18.09.2009, the detenu was released on bail on 21.09.09 and the detention order was passed on 29.09.2009 - almost

8 days after his release. Hence there is a delay in passing the order of detention. No affidavit is filed in this matter by any of the respondents. The

delay caused in passing the order of detention has thus remained unexplained. On this ground alone, this petition requires to be allowed.

6. On behalf of the detenu, his lawyer made a representation on 17.11.2009 by registered AD Post. It is the detenu's case that till filing of the

petition, he has not been replied and hence there is delay in deciding his representation and on that ground alone, his detention order requires to be

quashed and set aside. No affidavit is filed by any of the respondents in this matter explaining the situation. The averments made in the petition has

thus remain uncontroverted. It thus appears that the representation made on behalf of the detenu has not been considered at all by the concerned

authorities. Thus, on the ground of not considering the detenu's representation alone, this petition requires to be allowed.

7. Moreover, except the statements of some anonymous witnesses, there is no material on record which shows that the detenu is carrying on

activities of selling liquor which is harmful to the health of the public. In the case of Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner,

Surat (2001) (1) GLH 393 , having considered the decision of the Hon'ble Apex Court in the case of Dr. Ram Manohar Lohia Vs. State of Bihar

and Others, this Court held as under in paragraphs 22:

So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is

stated in the grounds of detention by the detaining authority. Regarding two statements having taken into account, the law laid down by the

Supreme Court in Dr. Ram Manohar Lohia Vs. State of Bihar and Others, and reiterated from time to time including decisions referred to by us

hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining

authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could

have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside.

8. In the case of Collector and Dist. Magistrate and Others Vs. S. Sultan, the Apex Court held as under:

The crucial issue, therefore, is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in

scope inasmuch as contravention of law always affects order. "Public order" has a narrower ambit, and public order could be affected by only

such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as

a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the

reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial

to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed"? This question has to be faced in every case on its facts.

13. "Public order" is what the French call "ordre publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is : Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed See Kanu

Biswas Vs. State of West Bengal,

9. Applying the ratio of the above decisions, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to "public order". In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, it cannot be sustained and, therefore, it deserves to be quashed and set aside.

10. The petition is allowed. The impugned order of detention dated 29.09.2009 passed by the Commissioner of Police, Surat City, respondent

No. 2, against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case.

Rule is made absolute accordingly. Direct service is permitted.