

(2015) 01 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 18109 of 2014

Sarfaraz

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-B)A.B.)
Bombay Police Act, 1951 — Section 135
Gujarat Police Act, 1951 — Section 135
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 2(c), 3, 3(2)
Penal Code, 1860 (IPC) — Section 114, 323, 324, 326, 504

Citation : (2015) 2 Crimes 382

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Khalid G. Shaikh, for the Appellant; Alpesh Bhatt, A.G.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—By way of this petition, the petitioner-detenué has challenged the order of detention passed by the Police Commissioner, Vadodara city, dated 22nd October 2014, in exercise of powers conferred on him under sub-section (1) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the PASA Act") and has also prayed for an order to set him free from detention.

2. The order of detention along with the grounds supplied to the detenué are suggestive of the fact that the petitioner has been detained labelling him as a "dangerous person" as provided under sub-section (2) of Section 3 of the PASA Act. The grounds of detention are also suggestive of the fact that the detaining authority has taken into consideration three cases registered with the Panigate Police Station, Vadodara, vide II-CR No. 120 of 2014 for the offence punishable under Section 135 of the Gujarat Police Act, vide I-CR No. 269 of 2014 for the offence punishable under Sections 323, 326 read with Section 114 of the Indian

Penal Code and Section 135 of the Gujarat Police Act, and vide I-CR No. 270 of 2014 for the offence punishable under Sections 324, 504, 506(2) read with Section 114 of the Indian Penal Code. The status of all the three F.I.Rs. has been shown as "pending in the court" and "police investigation". The subjective satisfaction as reflected from the grounds are to the effect that the detainee is habitually indulging in the offences falling within Chapter XVII of the Indian Penal Code. His highhanded actions create a situation of disturbance of public order. On these grounds, the Police Commissioner has ordered detention of the petitioner.

3. Mr. K.G. Shaikh, the learned advocate appearing for the detainee submitted that the order of detention is malicious, unjust and illegal. Learned counsel submitted that there is no material available with the detaining authority to indicate that the detainee is a dangerous person as defined under Section 2(c) of the PASA Act nor there is any material or antecedent to show that he is a habitual offender and involved in antisocial activities prejudicial to the maintenance of public order. It is his case that this order of detention is nothing but abuse of power at the hands of the Police Commissioner.

4. On the other hand, this petition has been vehemently opposed by Mr. Alpesh Bhatt, the learned AGP appearing for the State. According to Mr. Bhatt, there are sufficient grounds to issue the detention order. Learned AGP has submitted that the detention order was issued after careful consideration of the materials available before the detaining authority.

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the order of detention deserves to be quashed.

6. I am concerned only with the question as to whether there are sufficient grounds and materials available to detain the detainee in prison without trial in exercise of powers conferred under Section 3(2) of the PASA Act, describing him as a "dangerous person" under Section 2(c) of the Act on the basis of the three F.I.Rs. registered against the detainee.

7. On plain reading of the allegations levelled in the F.I.Rs., by any stretch of imagination, it cannot be said that the incidents in question were such which disturbed the public order, peace and tranquility.

8. I am of the view that merely because three offences are registered under the Indian Penal Code and the Gujarat Police Act that by itself is not sufficient to come to the conclusion that the public order has been disturbed.

9. At this stage, it would be expedient to quote the judgment rendered by the Division Bench of this Court in the matter of Ramesh Vandha Modhwadiya through Brother, Laxmanbhai Vandhabhai Modhwadiya Vs. State of Gujarat and Others, , wherein in paragraph 11, the Division Bench has observed as under:--

"11. PASA Act has been enacted with a clear object to prevent the crime and to protect the society from anti-social elements and dangerous characters against

perpetration of crime by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws, who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Law is well settled that the power under the Act should be exercised with restraint and great caution. In order to pass an order of detention under the Act against any person, the detaining authority must be satisfied that he is a "dangerous person" within the meaning of Section 2(c) of the PASA Act, who habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to sub-section (4) of Section 3 of the Act it is such "dangerous person" who for the purpose of Section 3 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" against whom an order of detention may lawfully be made. Further, subsection (1) of Section 3 confers power on the State Government and a District Magistrate or a Commissioner of Police under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order". The explanation attached to sub-section (4) of Section 3 reproduced above in the foregoing para contemplates that "public order" shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in sub-section (4) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Subsection (4) of Section 3 also provides that for the purpose of Section 3, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression "public order". A distinction has to be drawn between law and order and maintenance of public order."

In paragraphs 15 and 16, the Division Bench has, after considering the factual position on the record, observed as under:--

"15. We find that even going by the F.I.R. on the date of incident, it is alleged that the detenu's father had a pistol with him. There is nothing to show that he had fired with the pistol or caused any harm to anybody. Possession of pistol by detenu's father without license may be an offence so far as father is concerned and not the son, the detenu. Further, it is also to be noted that though they had disturbed the programme, later, the programme continued without any disturbance. Further, they had not caused any harm or bodily injury to anybody

present there. Even in the F.I.R. it is stated that they had not caused any serious harm or injury to anybody. At the most, in our view, the incident occurred on that day might have raised problems of law and order, but we find it impossible to see that they impinged public order. No motive was also attributed against the detenu for creating such an incident. In order to bring the activities of a person within the expression of acting in any manner prejudicial to the maintenance of public order to fall out and extend and reach of the alleged activities must be of such a nature the ordinary law cannot deal with it or prevent the subversive activities affecting the society. In our view, those incidents are not sufficient to take action against the detenu under the provisions of the PASA Act. We are, therefore, unable to agree that the incident in question occurred on 10.02.2008 would be sufficient to disturb the tempo of life of the community so as to disturb the public tranquility and public order.

16. The incident referred to in the F.I.R. had occurred on 10.02.2008 and criminal case was registered against the detenu and others and are being tried for the offences punishable under Sections 506(2) and 114 of the Indian Penal Code, Section 135 of the Bombay Police Act and Section 25(1-B)A.B.) of the Arms Act. Registration of cases and trial undertaken would be sufficient enough to contain those situations, but not sufficient to detain a person, and to characterise him as a "dangerous person" curtailing his life and liberty. There is nothing to show that the detenu is a habitual offender, apart from the solitary incident occurred on 10.02.2008. May be, a solitary act has the propensity of affecting the tempo of life and public tranquility, but the incident occurred on 10.02.2008 will not fall under that category. The detaining authority could not point out any other incident in which he was involved or a criminal case registered against him. Even the three witnesses have also not filed any complaints against the detenu. The solitary incident pointed out in the F.I.R. and the reach and potentiality of that incident cannot be said to be so grave to disturb even the tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. The mere fact that the order narrates the detenu as a "dangerous person" without any materials, a conclusion cannot be drawn that the detenu is a "dangerous person", unless the incident has reach and potentiality, and a single incident pointed out as such would not indicate that the detenu is a habitual offender. Power under the Act to detain a person in jail has to be exercised with restraint and great caution."

10. In the recent pronouncement of the Supreme Court in the matter of Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and Others, , the Supreme Court has considered all aspects pertaining to individual liberty and has also held that in a criminal case, if it is initiated against the detenue, the prosecution would not be in a position to procure evidence to sustain conviction cannot be a ground to pass an order of preventive detention under the National Security Act.

11. In the result, this petition succeeds and is hereby allowed. The order of

detention dated 22nd October 2014 passed by the respondent authority is hereby ordered to be quashed and the detenue is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute. Direct service is permitted.