

(2019) 02 GUJ CK 0110

In the Gujarat High Court

Case No : R/Special Civil Application No. 2978 Of 2019

Shahed @ Shahid @ Kannad Moudhin Shaikh Thru Friend
Mohammad Javed Belif

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Gujarat Prevention of Anti Social Activities Act, 1985 — Section 2(c), 3(2)
Indian Penal Code, 1860 — Section 114, 356, 379

Citation : (2019) 02 GUJ CK 0110

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Kishan H Daiya, Dhawan Jayswal

Final Decision : Allowed

Judgement

1.Â Heard learned advocates appearing for the respective parties.

2.Â The present petition is directed against order of detention dated 16.11.2018 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(c) of the Act.

3.Â Learned advocate for the detainee 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 356, 379, 114, etc of the Indian Penal Code by itself cannot bring the case of the detainee within the

purview of definition under section 2(c) of the Act. Further, learned advocate for the detainee 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 detainee 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

detainee 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 detainee 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 detainee indicate that detainee 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.Â 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(c) 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(c) 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 :

â??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.â 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 order of detention No.

PCB/PASA/DTN/283/2018 dated 16.11.2018 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.