
(2005) 06 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No. 7155 of 2005

Shakraji Jagaji Raval

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-06-2005

Acts Referred:

Citation : (2005) 06 GUJ CK 0048

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : Krishna U. Mishra, for the Appellant; P.D. Bhate, AGP, for the Respondent

Final Decision : Allowed

Judgement

Sharad D. Dave, J.—By filing this petition, the petitioner detenu has challenged the detention order dated 24.03.2005 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred upon him under Sub-section (1) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (the Act for short), as, the bootlegger and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to four criminal cases which are filed under the Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.

3. Learned advocate appearing on behalf of the petitioner detenu has submitted that when the detention order dated 24.03.2005 came to be passed, the petitioner was in judicial custody in connection with the criminal case registered against him under the Bombay Prohibition Act which is mentioned at serial No. 2 in the grounds of detention and there was no likelihood of continuing anti-social dangerous activities so as to disturb the public order by the detenu. It is submitted that there was no material before the detaining authority in respect of

filing of the bail application or in respect of likelihood of petitioner being released on bail, which results in non-application of mind vitiating the detention order.

4. On the other hand, Mr. Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent No. 2.

5. The impugned order came to be challenged by the petitioner detenu on various grounds. It is not in dispute that the petitioner was in judicial custody when the detention order dated 24.3.2005 came to be passed by the detaining authority. Therefore, when the petitioner was in judicial custody, there was no likelihood of continuing antisocial dangerous activities so as to disturb the public order by the detenu. It is pertinent to note that likelihood of filing of bail application by the petitioner and likelihood of releasing the petitioner on bail, both are entirely different and separate propositions. It is required to be noted that there must be some credible material before the detaining authority to reach to the subjective satisfaction either about likelihood of filing of bail application and/or likelihood of petitioner being released on bail. The facts of the present case are squarely covered by the decision of the Apex Court in the case of Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. Admittedly, the petitioner was in judicial custody and there was no material before the detaining authority to reach to the subjective satisfaction that the detenu was likely to file the bail application and was likely to be released on bail and in absence thereof, the subjective satisfaction of the detaining authority is vitiated, and, therefore, the impugned detention order is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 24.03.2005 is quashed and set aside. The detenu Shakraji Jagaji Raval is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.