

(1989) 06 GUJ CK 0005

In the Gujarat High Court

Case No : Special Criminal Application No. 1131 of 1988

Sindhi Lohana Ravchand Gopaldas

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-06-1989

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 9(1), 9(2)

Citation : (1991) 54 ELT 61 : (1989) 2 GLR 384

Hon'ble Judges : T.U. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Advocate : M.H. Barejia, for N.D. Nanavati, for the Appellant; R.P. Solanki, Addl. P.P., for the Respondent

Judgement

Ravani, J.—The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1989 (for short "PASA") pursuant to order dated September 21, 1988 passed by the detaining authority (District Magistrate, Junagadh) inter alia on the grounds that he is a "boot-legger" within the meaning of term defined under the PASA and his activity as "boot-legger" was prejudicial to the maintenance of the public order.

2. In the grounds of detention served upon the petitioner, it is disclosed that there were in all 23 criminal cases against the petitioner during the years 1984 to 1988. Out of the 23 cases, 12 cases were pertaining to the storage, sale and/or consumption of prohibited liquor registered under the provisions of Bombay Prohibition Act, 1949. Out of these 12 cases he was acquitted in 5 cases and other cases were pending in the court. Over and above the aforesaid criminal cases, the detaining authority has relied upon the statements of five witnesses. These witnesses, as mentioned in the grounds of detention, have stated that the petitioner had engaged himself in manufacturing country liquor and storing and selling the same. That he was intimidating to the witnesses and members of public and thereby creating an atmosphere of terror and panic. On the basis of

the material placed before him, the detaining authority has come to the conclusion that the petitioner's activity as boot-legger was required to be curbed and it could not be curbed or prevented unless he was detained under the provisions of PASA. Hence the order of detention.

3. The order of detention is challenged mainly on the ground that the detaining authority claimed privilege u/s 9(2) of the PASA for the non-disclosure of names of five witnesses whose statements have been relied upon by the detaining authority. The privilege claimed was limited to the extent of non-disclosure of names and addresses of these witnesses. Even so, the contents of the statements on which reliance was placed by the detaining authority have not been supplied to the detenu. Therefore, it is submitted that the petitioner's right to make effective representation against the order of detention has been effected and this has resulted into infraction of safeguards enacted in Section 9(1) of PASA and Article 22(5) of the Constitution of India.

4. The aforesaid contention is specifically raised in para 8 and 9 of the petition. An attempt is made to reply the same in the affidavit-in-reply filed by the detaining authority himself. It is averred in the affidavit-in-reply that the detaining authority could claim the privilege u/s 9(2) of the PASA and the detaining authority thought it proper not to disclose even the contents of the statements relied upon by him. In a given case, if the facts of the case justify, the detaining authority may not disclose even the contents of the statements relied upon by him because Section 9(2) of PASA is very widely worded. The relevant provisions of Section 9(2) of PASA inter alia provides that nothing contained in sub-section (1) shall require the detaining authority "to disclose facts which it considers to be against the public interest to disclose." For exercising this privilege, the detaining authority should consider it necessary to be against the public interest to disclose the facts in question. Similar is the provision in the article 22(5) of the Constitution of India. The pre-condition of the exercise of the aforesaid privilege is that there should be conscious determination by the detaining authority that certain facts should not be disclosed and disclosure of the same would be against the public interest. In the instant case as mentioned in the grounds of detention, the detaining authority has considered that the names of witnesses should not be disclosed. The detaining authority has stated in the grounds of detention as follows :-

The detaining authority decided not to disclose the names of the witnesses. The detaining authority has never considered that the facts disclosed by the witnesses were not to be disclosed to the petitioner-detenu and that the disclosure of the same would be against the public interest. Therefore, in the facts of the case, non supply of the copies of the statement of the witnesses relied upon by the detaining authority has resulted into deprivation of the petitioner's right to make effective representation against his detention and he has been deprived of his right to know the grounds of detention. In this view of the matter, the order of detention cannot be sustained.

5. In the result the petition is allowed. The order of detention produced at Annexure "A" to the petition is quashed and set aside. The petitioner is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly.

6. Office is directed to send a copy of the writ to the Superintendent, Central Prison, Sabarmati, Ahmedabad, immediately.