

(2016) 01 GUJ CK 0021

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1198 of 2015 in Special Civil Application No. 11896 of 2015 with Civil Application No. 9789 of 2015

State of Gujarat

APPELLANT

Vs

Sureshbhai Keshavbhai Shah

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 3(2)

Citation : (2016) 4 GLR 3175 : (2016) 1 GujLH 444

Hon'ble Judges : Mr. Jayant Patel, A.C.J. and Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Mr. D.M. Devnani, AGP, for the Appellant; Mr. B.M. Mangukiya and Ms. Bela A. Prajapati, Advocates, Mr. Parth H. Bhatt, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Vipul M. Pancholi, J.—The present appeal is directed against the order dated 24.07.2015 passed by learned Single Judge in Special Civil Application No.11896 of 2015, whereby, learned Single Judge has released the original petitioner-detenu for a temporary period on certain terms and conditions during the pendency of the petition.

2. Heard learned AGP Mr. D.M. Devnani for the appellants-State Authorities and learned advocate Mr. B.M. Mangukiya for the respondent No. 1 detenu.

3. Looking to the question involved in this appeal, the present appeal is taken up for final hearing.

4. Learned AGP Mr. Devnani mainly contended that original petitioner-detenu challenged the order dated 22.07.2015 passed by the District Magistrate, Anand, issued in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on

various grounds. Petition was immediately filed, wherein, the learned Single Judge by an impugned order dated 24.07.2015, issued the notice, which was made returnable on 07.08.2015. However, while issuing the notice, the learned Single Judge considered the prayer of the original petitioner-detenu for temporary release and thereby released him for temporary period on certain terms and conditions.

5. Learned AGP Mr. Devnani would submit that the learned Single Judge has no power to release the detenu for temporary period during the pendency of the petition in detention matters. Alternatively, he contended that even assuming that the learned Single Judge is having powers to release the detenu for temporary period pending hearing and disposal of the petition, learned Single Judge has not assigned any reasons while passing the impugned order and therefore the impugned order is non speaking order and therefore the same be quashed and set aside. Learned AGP has fairly submitted that during the pendency of the present appeal, the order of detention passed by the District Magistrate against the original petitioner-detenu is quashed by this Court. However, this Court may decide the issue involved in this appeal.

6. Learned AGP has placed reliance upon decision rendered by the Hon''ble Supreme Court in the case of State of U.P. v. Jaiaram and etc., reported in AIR 1982 SC 942 and submitted that if the persons held in detention are released on bail in a casual manner, the very object and purpose of detention would be frustrated. The detenu cannot be released on bail as a matter of common practise. The learned AGP therefore submitted that this Court may decide the issue involved in this appeal and quash and set aside the impugned order passed by the learned Single Judge.

7. On the other hand, learned advocate Mr. B.M. Mangukiya appearing for the respondent detenu mainly contended that the order of detention passed by the District Magistrate against the detenu is quashed and set aside by this Court during the pendency of the present appeal and therefore, the issue involved in this appeal is merely academic and therefore, the appeal be disposed of only on this ground. On merits, learned advocate Mr. B.M. Mangukiya contended that the learned Single Judge is having ample power to release the detenu on bail for temporary period on certain terms and conditions and therefore, learned Single Judge has not committed any illegality as argued by learned AGP. In support of the aforesaid contention, learned advocate Mr. Mangukiya has placed reliance upon the decision rendered by the Hon''ble Supreme Court in the case of State of Bihar v. Rambalak Singh "Balak" and others, reported in AIR 1966 SC 1441 and more particularly, observation made in paragraph No.6, which reads as under:

"6. We are not impressed by this argument. If on proof of certain conditions or grounds it is open to the High Court to set aside the order of detention made under R. 30 of the Rules, and direct the release of the detenu, we do not see how it would be possible to hold that in a proper case, the High Court has no jurisdiction to make an interim order giving the detenu the relief which the High

Court would be entitled to give him at the end of the proceedings. The general principle on which the observations of this Court were based in the Special Reference would apply as much to the habeas corpus proceedings commenced on behalf of a detenu detained under R. 30 of the Rules as to any other habeas corpus proceedings. If the Court has jurisdiction to give the main relief to the detenu at the end of the proceedings, on principle and in theory, it is not easy to understand why the Court cannot give interim relief to the detenu pending the final disposal of his writ petition. The interim relief which can be granted in habeas corpus proceedings must no doubt be in aid of, and auxiliary to, the main relief. It cannot be urged that releasing a detenu on bail is not in aid of, or auxiliary to the main relief for which a claim is made on his behalf in the writ petition. It is true that in dealing with the question as to whether interim bail should be granted to the detenu, the Court would naturally take into account the special objects which are intended to be achieved by orders of detention passed under R. 30. But we are dealing with the bare question of jurisdiction and are not concerned with the propriety or the reasonableness of any given order. Considering the question as a bare question of jurisdiction, we are reluctant to hold that the jurisdiction of the High Court to pass interim auxiliary orders under Article 226 of the Constitution can be said to have been taken away by necessary implication when the High Court is dealing with habeas corpus petitions in relation to orders of detention passed under R. 30 of the Rules."

8. Having heard learned advocates appearing for both the parties and having gone through the decisions relied upon by the learned advocates, the question which is required to be considered in this appeal is;

"Whether the learned Single Judge is having power under Article 226 of the Constitution of India to release the detenu temporarily during the pendency of the petition or not and if yes, what is the scope of exercise of such powers."

9. The aforesaid issue is in fact, decided by the Hon^{ble} Supreme Court. In the case of Rambalak Singh "Balak" (supra), the Hon^{ble} Supreme Court has held that if the High Court is having power to set aside the order of detention and direct the release of the detenu, the High Court is having jurisdiction to pass an interim order, giving the detenu the relief which the High Court would be entitled to give him at the end of the proceedings. However, at the same time, the Hon^{ble} Supreme Court has further observed that in dealing with the question as to whether interim bail should be granted to the detenu, the Court would naturally take into accounts the special objects which are intended to be achieved by the orders of the detention passed under a particular statute. The Hon^{ble} Supreme Court in the aforesaid decision specifically held in paragraphs No. 10 and 12 as under:

"10. Having thus rejected the main argument urged by the learned Advocate General, we must hasten to emphasise the fact that though we have no hesitation in affirming the jurisdiction of the High Court in granting interim relief by way of bail to a detenu who has been detained under R. 30 of the Rules, there

are certain inexorable considerations which are relevant to proceedings of this character and which inevitably circumscribe the exercise of the jurisdiction of the High Court to pass interim orders granting bail to the detenu. There is not doubt that the facts on which the subjective satisfaction of the detaining authority is based, are not justiciable, and so, it is not open to the High Court to enquire whether the impugned order of detention is justified on facts or not. The jurisdiction of the High Court to grant relief to the detenu in such proceedings is very narrow and very limited. That being so, if the High Court takes the view that *Prima facie*, the allegations made in the writ petition disclose a serious defect in the order of detention which would justify the release of the detenu, the wiser and the more sensible and reasonable course to adopt would invariably be to expedite the hearing of the writ petition and deal with the merits without any delay. Take the case where *mala fides* are alleged in respect of an order of detention. It is difficult, if not impossible, for the Court to come to any conclusion, even *prima facie*, about the *mala fides* alleged, unless a return is filed by the State. Just as it is not unlikely that the High Courts may come across cases where orders of detention are passed *mala fide*, it is also not unlikely that allegations of *mala fides* are made light heartedly or without justification; and so, judicial approach necessarily postulates that no conclusion can be reached, even *prima facie*, as to *mala fides* unless the State is given a chance to file its return and state its case in respect of the said allegations; and this emphasises the fact that even in regard to a challenge to the validity of an order of detention on the ground that it is passed *mala fide*, it would not be safe, sound or reasonable to make an interim order on the *prima facie* provisional conclusion that there may be some substance in the allegations of *mala fides*. What is true about *mala fides* is equally true about other infirmities on which an order of detention may be challenged by the detenu. That is why the limitations the jurisdiction of the Court to grant relief to the detenus who have been detained under R. 30 of the Rules, inevitably introduce a corresponding limitation on the power of the Court to grant interim bail.

12. If an order of bail is made by the Court without a full trial of the issues involved merely on *prima facie* opinion formed by the High Court, the said order would be open to the challenge that it is the result of improper exercise of jurisdiction. It is essential to bear in mind the distinction between the existence of jurisdiction and its proper exercise. Improper exercise of jurisdiction in such matters must necessarily be avoided by the courts in dealing with applications of this character. Therefore, on the point raised by the learned Advocate General in the present appeal, our conclusion is that in dealing with habeas corpus petitions under Article 226 of the Constitution where orders of detention passed under R. 30 of the Rules are challenged, the High Court has jurisdiction to grant bail, but the exercise of the said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the said Rules."

10. The Hon"ble Supreme Court in the case of Jairam and etc. (supra), after considering the decision rendered in the case of Rambalak Singh "Balak" (supra), held in paragraph No. 6 as under:

"6. We are unable to appreciate how the learned Single Judge could release the respondents on bail when, in the first instance, the writ petitions filed by them were listed for hearing before a Division Bench. Secondly, and that involves a question of principle, we are unable to see for what special reason the learned Judge thought it necessary to release the respondents on bail. The order passed by the learned Judge does not show that there was any pressing or particular reason of a unique kind for which it was imperative to enlarge the respondents on bail. If persons held in detention are released on bail in the manner done by the learned Judge, the very object and purpose of detention will be totally frustrated. Grave illness or pressing and personal business may justify an order of release in detention cases for a short period suited to the exigencies of the particular occasion. But a detenu cannot be released on bail as a matter of common practise, on considerations generally applicable to cases of punitive detention. The learned Single Judge virtually took upon himself the decision of the writ petitions of merits. He found, evidently on an on the spot argument, that the State Government had erred in not considering the representations of the respondents before forwarding them to the Advisory Board and released the respondents on bail as their further continuance in detention was "prima facie" vitiated."

11. Thus, from the aforesaid decisions, the answer of the question posed in this appeal is as under:

I. The learned Single Judge is having jurisdiction under Article 226 of the Constitution of India to release the detenu for temporary period during the pendency of the petition. However, such powers are required to be exercised in great circumspection and not in routine manner.

II. While exercising such powers, the Court shall consider the object and purpose of the Act, under which, the order of detention has been passed.

III. The detenu cannot be released on bail/for temporary period as a matter of common practise on considerations generally applicable to cases of punitive detention. The jurisdiction of the learned Single Judge to grant relief to the detenu is very limited.

IV. If the learned Single Judge is of the opinion that prima facie, the allegations made in the writ petition disclose a serious defect/lacuna in the order of detention, which would justify the release of the detenu, the wiser and the reasonable course to adopt by the Court would be to expedite the hearing of the writ petition and deal with the merits without any delay.

V. While releasing the detenu on bail/for temporary period, the Court shall assign brief reasons for exercising such jurisdiction.

12. In view of the aforesaid discussion, in the present case, learned Single Judge has not assigned reason while exercising power for releasing the respondent-detenu for temporary period and therefore the said order would have been quashed and set aside, but as the main order of detention passed by the detaining authority has been quashed and set aside on merits while hearing the aforesaid Special Civil Application, and the same is not challenged in this appeal, we leave it at that.

13. The present appeal is accordingly disposed of.

14. In view of the order passed in main Letters Patent Appeal No. 1198 of 2015, Civil Application No.9789 of 2015 will not survive and the same also stands disposed of.