
(2015) 05 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 7432 of 2014

Sureshbhai Sonaji Solanki (Luhar)

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)(B)

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 2(b), 3

Citation : (2015) 05 GUJ CK 0005

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : P.P. Majmudar, for the Appellant; Harsheel Shukla, Asst. Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of this petition, the petitioner-detenu is apprehending his detention pursuant to FIR being Prohibition C.R. No. 5001 of 2014 with Patdi Police Station, Surendranagar under Section 66(1)(B), 65(A)(E) and 116(B) of the Bombay Prohibition Act. The petitioner has preferred present petition at pre-execution stage to avoid his detention.

2. I take notice of the fact that the petitioner has been detained as a "bootlegger". I also take notice of the fact that the detaining authority has relied upon one case registered with Shahpur Police Station as mentioned aforesaid.

3. Section 2(b) of the PASA Act defines the term "bootlegger", which reads as under:--

"S. 2(b) "bootlegger" means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any

money or supplies any animals, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing."

3.1 Section 3 of the PASA Act speaks about the power to make orders detaining certain persons. It reads as under:

"Sec. 3 Power to make orders detaining certain persons:

(1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said subsection.

(3) When any order is made under this section by an authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, has a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

Explanation:- For the purpose of this sub-section, 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 this sub-section directly or indirectly, is 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."

4. In this connection, I may refer to a decision of the Supreme Court in Pushkar Mukherjee and Others Vs. The State of West Bengal, AIR 1970 SC 852 : (1970) CriLJ 852 : (1969) 1 SCC 10 : (1969) 2 SCR 635 , where the distinction between "law and order" and "public order" has been clearly laid down. The Court observed as follows:

"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."

5. Having heard the learned counsel for the parties and having gone through the grounds of detention, in my opinion, the detaining authority has failed to substantiate that the alleged antisocial activities of the petitioner-detenu adversely affect or are likely to affect adversely the maintenance of public order. Just because a case has been registered against the petitioner-detenu under the Prohibition Act, by itself, does not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community much less public health. It may be that the petitioner-detenu is a "bootlegger" within the meaning of Section 2(b) of the PASA Act, but merely because he is a "bootlegger", he cannot be preventively detained under the provisions of the PASA Act unless, as laid down in sub-section (4) of Section 3 of the PASA Act, his activities as a "bootlegger" affect adversely or are likely to affect adversely the maintenance of public order.

6. In the result, this petition is allowed. The impugned action of the respondent authorities seeking to detain the petitioner under the provisions of PASA Act in connection with the aforesaid FIR is against the principles of natural justice and the same is not permitted. The petitioner shall not be detained in connection with the aforesaid FIR. Rule is made absolute. Direct service is permitted.