
(1999) 05 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 167 of 1999

Vanrajsinh Danubha Jadeja

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2), 3(4), 9(2)

Citation : (2000) CriLJ 1849

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M. Doshit, J.—Heard learned advocates for the respective parties.

2. The petitioner appears to be engaged in the activity of manufacturing country-liquor and bootlegging. During the period from March, 1995 to January, 1998, as many as 5 prohibition cases have been lodged against the petitioner and in each of the cases, the petitioner has been released on bail. The said cases are pending for trial before the concerned Courts. In view of the aforesaid bootlegging activities carried on by the petitioner, and in view of the statements of the witnesses, the petitioner, under order dated 5th August, 1998, has been detained in custody by the District Magistrate, Rajkot, made under the powers conferred upon him u/s 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as, "the Act").

3. Apart from the petitioner's activities of manufacturing country liquor and bootlegging, the Detaining Authority has stated him to be a head strong person who uses deadly weapons against the persons who do not submit to his demands. The Detaining Authority has, therefore, found the petitioner to be a dangerous person whose activities are prejudicial to the maintenance of the public order.

4. The order of detention has been challenged on the grounds (a) the impugned

order has been made in the month of August, 1998 i.e., seven months after the last prosecution was lodged against the petitioner, and the delay of seven months has not been explained; (b) even if the allegations made against the petitioners were presumed to be true, the activities carried on by the petitioner can at the most be said to be a problem of law and order and cannot be said to be prejudicial to the maintenance of the public order; (c) the Detaining Authority has claimed privilege u/s 9(2) of the Act without verifying the necessity to do so; (d) some of the pages in supporting material supplied to the petitioner are not legible. In support of her contentions, learned advocate has relied upon the judgments of the Hon"ble Supreme Court in the matter of Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, and of this Court, in the matters of Dilipbhai Devsibhai Vagri Vs. State of Gujarat and Others, and of Amrat Ramabhai Vaghari v. Commissioner of Police, Ahmedabadn 1995 (2) GLH 874.

5. The petition is contested by the learned APP Mr. Chauhan, He has submitted that having regard to the offences registered against him, it is evident that the petitioner has been manufacturing country liquor and is also indulging into bootlegging activities. In spite of the several prosecutions lodged against him, the petitioner has continued his illegal activities. The petitioner is, therefore, a habitual offender and in view of the provisions contained in Sub-section (4) of Section 3 of the Act and the explanation thereto, he is deemed to be acting in a manner prejudicial to the maintenance of public order. In support of his contentions, he has relied upon judgements of the Division Bench of this Court in the matters of Popat Mohan Vaghari v. State of Gujarat 1989 (1) GLH 551 and Chandulal Jethalal Jayswal v. Commissioner of Police, Vadodara City 1990 (1) GLH 148.

6. In the matter of Pradeep Nilkanth Paturkar (supra), the Hon-ble Supreme Court has, while considering the question of delay in making the order of detention quoted its earlier judgement in the matter of Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, , with approval, which reads as under at page 155, of Cri LJ :-

Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

The Hon"ble Court also quoted decision in the matter of Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, , with approval, the same reads as under :-

... It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation....

Relying on the above referred observations made in its earlier judgements, the Court held that, "each case is to be decided on the facts and circumstances

appearing in that particular case". Now, on the facts of the present case, prima facie, it would appear that there has been a long unexplained delay in taking the preventive action against the petitioner, after series of prosecutions were lodged against him. However, on perusal of the affidavit made by the Detaining Authority, it appears that in the last of the offences, which was registered in the month of January, 1998, the police investigation continued up to the month of June, 1998 and the chargesheet was submitted on 13th June, 1998 alone. The Detaining Authority has categorically stated that after the aforesaid chargesheet was filed and all the papers were received by him, the order of detention was made after perusal of the relevant material and the investigation papers. Considering the nature of offences alleged to have been committed by the petitioner and the fact that the chargesheet was filed on 13th June, 1998, I am of the view that the delay caused in taking the preventive measure against the petitioner cannot be said to be fatal and the order of detention would not be vitiated on that ground.

7. The next question that arises for consideration is whether the activities carried on by the petitioner can be said to be prejudicial to the maintenance of the public order. It is indisputable that the petitioner is alleged to have been indulging in the activities of manufacturing and selling of country liquor and other anti-social activities. Such activities of bootlegging has u/s 3(4) of the Act, been deemed to be "prejudicial to the maintenance of the public order". The explanation to the said sub-section provides, inter alia, that for the purpose of the said sub-section, public order shall be deemed to have affected adversely, if such activity 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 or property or public health.

7.1. In the matter of Dilipbhai Devasibhai Vagri (supra), the learned single Judge of this Court has held that, "mere commission of an offence or offences under the Bombay Prohibition Act cannot be said to be an act detrimental to public order or acts on accounts of which public order was disturbed or is likely to be disturbed". In the matter of Amrat Ramabhai Vaghari (supra) also, the learned single Judge having considered the provisions contained in Section 3(4) of the Act has taken a view that even under the extended meaning of the words "maintenance of public order" u/s 3(4) and the explanation thereto, the bootlegging activity would not tantamount to acting in a manner prejudicial, to the maintenance of public order.

7.2. It is obvious that the provisions contained in Section 3(4) of the Act was not brought to the notice of the Court in the matter of Dilipbhai Devasibhai Vagri (supra). Further, the earlier Division Bench Judgments in the matters of Popat Mohan (supra) and Chandulal Jethalal Jayaswal (supra) were also not brought to the notice of the learned single Judge in the matters of Dilip Devasibhai Vagri (supra) and Amrat Ramabhai Vaghari (supra). In the matters of Popat Mohan (supra) and Chandulal Jethalal (supra), the Division Bench of this Court had an

occasion to consider the order of preventive detention made under the Act on account of the concerned detenus" dealing in illicit country liquor by manufacturing, storing and selling the same to the people. The Court considering the provisions contained in Section 3(4) of the Act and the explanation thereto gave an extended meaning to the words "public order". The Court held that for the purpose of the said sub-section, the term "public order" had been given extended meaning under the explanation thereto. The Court further held that "consumption of country liquor by a large number of people itself is a danger to the public health. This is a matter of commonsense and such a reasonable inference has got to be drawn by having recourse to the experience of life." In the matter Chandulal Jethalal Jayswal (supra), it is held that, "...It is, therefore, clear that if there is any activity of a bootlegger which is prejudicial to the maintenance of public order within the enlarged meaning of Sub-section (4) of Section 3 of the Act that would be the material on the basis of which subjective satisfaction can be arrived at. " The Court further held that, "...when the petitioner was not having any licence as provided under the Rules, the legitimate inference that can be drawn on the facts and circumstances of the case is that he was storing the same with an intention to sell it to the bootleggers who would use it after diluting the same as country liquor (LATTHA) contrary to the provisions of the Act and relevant rules."

7.3. The bench in both the above referred judgments have relied upon earlier Supreme Court judgment in the matter of Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, .

7.4. The aforesaid judgments of the Division Bench of this Court are, in my view, the binding precedents which ought to be followed. It is, however, apparent that neither of the aforesaid judgments was brought to the notice of the learned single Judges deciding the aforesaid cases, in the matters of Dilipbhai Devasibhai (supra) and Amrat Ramabhai (supra). Both the above referred judgments, therefore, are per incuriam. On the facts of the present case, both of the above judgments of the Division Bench shall squarely apply. The petitioner, herein who is indulging into manufacturing and selling of country liquor, shall be deemed to have acted in a manner prejudicial to the maintenance of public order. He, therefore, can lawfully be detained under the Act.

8. This takes me to the third contention. It is contended that the information in respect of the identity of the witnesses has wrongly been withheld without verifying whether there had been any necessity to withhold such information from the petitioner. Upon perusal of the papers, it appears that the concerned police officer who recorded the statements of witnesses has verified the statements given by the witnesses and also the genuineness of the apprehension voiced by such witness. Besides, even the detaining authority, the District Magistrate, has made a categorical statement on oath that he had carefully examined and considered the material placed before him and had personally verified the genuineness and correctness of the statements of witnesses. He was

satisfied that the apprehension voiced by the witnesses were genuine and that there identity was required to be withhold from the petitioner. However, the said statements are not supported by the material on record. The same, therefore, cannot be believed. The necessity of such verification by the detaining authority himself has been dealt with in extenso by this Court in the matter of Bai Amina Vs. State of Gujarat and Others, . The Court on facts held that, "failure to disclose the names of persons who made the statements which are relied upon in the second ground has resulted in grave prejudice to the petitioner by denial to her of the right of effective representation against the detention." The Court further held that, "the Detaining Authority must itself be satisfied that it is against the public interest to make such discloser". In the present case also, the detaining authority has casually stated about his personal verification which is not supported by the material on record. Therefore, in view of the aforesaid judgment, this lapse on the part of the detaining authority shall vitiate the order of detention.

9. The contention that some of the pages from the supporting material were not legible is without substance. It is contended that the orders granting bail were not legible in respective pages. This Court, in the matter of Dilipbhai Devasibhai (supra) has held that, "...it is not obligatory to supply a copy of the bail applications or bail orders unless the same is made ground for detention." In the present case, it is obvious that the orders of bail granted to the petitioner are not the ground of detention and even if such bail orders were illegible the order of detention would not be vitiated.

10. For the reasons recorded hereinabove, the order of detention, Annexure-A to the petition, is quashed and set aside. The petition is allowed. The petitioner, unless required in some other case, be set free. Rule is made absolute.