

(2014) 08 GUJ CK 0053

In the Gujarat High Court

Case No : Special Civil Application No. 9004 of 2014

Vijay

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3

Citation : (2014) 08 GUJ CK 0053

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : Shakeel A. Qureshi, Advocate for the Appellant; Amita Shah, Assistant Government Pleader, Advocate for the Respondent

Judgement

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A.J. Desai, J.—By filing present petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the order of detention dated 25.03.2014 passed against the detinue by the respondent No. 2-The Commissioner of Police, Vadodara in exercise of power under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA Act"). The detinue is branded as "dangerous person".

2. Heard learned advocate for the petitioner and learned Assistant Government Pleader Ms. Amita Shah for respondent No. 3.

3. The detinue came to be detained as "dangerous person" on his involvement in the offences being [I] C.R. No. I-271 of 2013 registered before Manjalpur Police Station, [ii] C.R. No I-264 of 2013 registered before Makarpura Police Station and [iii] C.R. No. I-41 of 2014 registered before Makarpura Police Station.

4. It has been submitted by the learned advocate for the petitioner that the allegations made against the detinue are not correct; that the material collected by the detaining authority and looking to the statement recorded by the

detaining authority, it cannot be said that the alleged activities of the petitioner would fall within the purview of "dangerous person".

5. I have gone through the grounds of detention and considered the arguments advanced by the learned advocate for the petitioner as well as the learned Assistant Government Pleader.

6. The Court is of the opinion that there is much substance in the arguments advanced by learned advocate for the petitioner. The detaining authority has placed reliance on the aforesaid registered offences and statements of witnesses. After recording the subjective satisfaction about the detainee being a dangerous person and with a view to preventing him from acting in a manner prejudicial to the maintenance of public order, the impugned order of detention was passed by the detaining Authority.

7. Except the general statement, there is no material on record which shows that the detainee is acting in such a manner which is dangerous to the public order. There are number of decisions of this Court as well as the Hon''ble Apex Court on the point of relying on this point. In view of the ratio laid down by the Hon''ble Supreme Court in the case of (I) The District Collector, Ananthapur and Another Vs. V. Laxmanna, ; (ii) Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, ; and (iii) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, the Court is of the opinion that the activities of the detainee cannot be said to be dangerous to the maintenance of public order. In the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, , having considered the decision of the Hon''ble Apex Court in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, , this Court held that the cases wherein the detention order are passed on the basis of the statements of such witness fall under the maintenance of "law and order" and not "public Order".

8. Applying the ratio of the above decisions, it is clear that before passing an order of detention, the detaining authority must come to a definite findings that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

9. The petition is allowed. The impugned order of detention dated 25.03.2014 passed by respondent No. 2 is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if he is not required to be detained in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.