

(1999) 02 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 5533 Of 1998

Vinaybhai K. Yadav

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Citation : (1999) 02 GUJ CK 0012

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Anil S. Dave, for the Appellant; C.C. Bhalja, Assistant Govt. Pleader for Respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—Through this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing the detention order dated 15.6.1998 passed by the District Magistrate, Vadodara u/s 3(2) of the Gujarat Prevention of Antisocial Activities Act (for short "PASA") and has further prayed for his immediate release from illegal detention.

2. The brief facts emerging from the grounds of detention (Annexure "B") are that from four cases registered under sections 379 511 120B of Indian Penal Code and Section 3(2) of the Prevention of Damage of Public Properties Act and from the statements of four confidential witnesses, the Detaining Authority was satisfied that the petitioner is a dangerous person within the definition of section 2(c) of the PASA and his activities were prejudicial for maintenance of public order. Consequently, the impugned order of detention was passed. This order is under challenge in this petition on several grounds. The main ground is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. It was urged that the registered offences are not against the public order and activities in connection with those offences were not prejudicial for maintenance of public order. Another contention has been that the statements of witnesses are vague in as much as the date, time and place have not been

specified by them and from the activities stated by the confidential witnesses, the public at large was not affected. Hence, from these statements, it cannot be said that the activities of the petitioner were prejudicial for maintenance of public order. Another contention in the same context has been that no injury was caused to any member of the public in either of these incidents. Thus, in effect the cumulative effect of these contentions is that the activities of the petitioner were not prejudicial for maintenance of public order.

3. The next contention has been that the representation of the petitioner dated 9.7.1998 given to the District Magistrate, Vadodara was received on 20.7.1998 but it was forwarded to the State Government on 31.7.1998 and there is no explanation of this undue detention of representation for a period of 11 to 12 days. For these two reasons, it was vehemently argued that the impugned order of detention has been rendered illegal and as such the continued detention is also rendered illegal.

4. A dangerous person is defined u/s 2(c) of the PASA to mean a person, who either by himself or as a member or leader of a gang habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. From the grounds of detention, it is clear that four cases were registered against the petitioner under sections 379 and 511 of the IPC. These are offences under Chapter XVI of the IPC. Similar commission of the offence was highlighted by the four witnesses who have stated that not only that the petitioner in the company of his associates was committing theft of crude oil by breaking ONGC pipeline and he was having sword and other deadly weapons with him and his associates. Moving with sword which is prohibited under the Arms Act, can be said to be an offence punishable u/s 25 of the Arms Act. Repetition of commission of offence of theft of crude oil from ONGC pipeline and damage to public property disclosed from four registered cases together with the statements of four confidential witnesses furnished ample material to the Detaining Authority to entertain subjective satisfaction that the petitioner is dangerous person. The subjective satisfaction of the Detaining Authority on this point cannot be disturbed nor it was urged that the Detaining Authority was in manifest error in reaching such subjective satisfaction.

5. The person who is dangerous person cannot be preventively detained only on the ground that he is dangerous person. Section 3(1) of PASA provides that unless activities of such person are prejudicial for maintenance of public order he cannot be preventively detained. Section 3(4) of the PASA further provides that for the purposes 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 affects adversely or are likely to affect adversely the

maintenance of public order.

6. Explanation to this sub-section further reads as under :

"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".

7. From the above provisions, it is clear that there is deeming provision in section 3 sub-section (4) of PASA that a person is said to be acting in a manner prejudicial to maintenance of public order, when such person is either engaged or is making preparation for engaging in any activities inter alia as a danger person which affects adversely or is likely to affect adversely the maintenance of public order. Explanation to sub-section (4) further makes it clear that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if the activities of a danger person is causing directly or indirectly or is likely to cause any harm, danger or alarm or feeling of insecurity amongst general public or any section thereof or grave wide spread danger to life, property or public health. When public order has been defined in PASA and it has been given deeming meaning u/s 3(4) and explanation appended thereto there is no reason why an abstract notion of public order should be imported in it viz riot or affray like situation arising due to antisocial activities of the petitioner. If the activities of the petitioner are such which are directly or indirectly causing or are likely to cause any harm or danger or alarm or feeling of insecurity among general public or any section thereof, he will be deemed to be acting prejudicially for maintenance of public order. Likewise if there is danger to property, may be the property of ONGC it can be said that the petitioner acted in a manner which was likely to cause situation adversely affecting maintenance of public order. The learned Counsel for the petitioner has relied upon the Apex Court verdict in Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Another, and M.J.Shaikh Vs. M.J.Mehta (2) GLR 1268 and has urged that in view of these verdicts the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. He has also referred to few unreported decisions of this Court viz. Special Criminal Application No. 1681 of 1992 decided on 3.3.1993, Special Civil Application No. 6728 of 1998 decided on 25.11.1998 and Sagir Rasulbhai Shaikh Vs. Commissioner of Police, Special Criminal Application No. 707 of 1991 decided on 30.7.1991. However, as stated above, keeping in view the provisions of section 3(4) and explanation appended thereto the activity of the petitioner in each case has to be examined on merits and not that the decision can be applied in abstract. In all the cases cited by the learned Counsel for the petitioner the activities of the petitioner were examined and were found to be the activities which were not prejudicial for maintenance of public order. These cases can therefore be taken for a limited purpose that if the

activities of the petitioner are not found to be prejudicial for maintenance of public order certainly the order of detention cannot be maintained and the same has to be quashed. But for this, factual allegation against the petitioner has to be examined.

8. The contention has been that no injury was caused to any member of the public. It is however, not necessary that every activity of the petitioner must cause injury to the witness or to the victim or to the members of the public. The concept of causing injury is not included or found in section 3(4) or in the explanation appended thereto of the PASA. Consequently causing of injury is not an essential ingredient for holding that the activities of the petitioner were prejudicial for maintenance of public order.

9. The next contention has been that the registered offences are not against public hence from these offences public order was not disturbed. I cannot accept the contention that the registered cases must be against public at large. What is required is that the activities in such cases should be such which are likely to disturb public order or have actually disturbed public order. In all the four registered cases under sections 379 and 511 IPC read with section 3(2) of Prevention of Damage to Public Property Act, the allegation in brief is that the petitioner was either attempting to commit theft of crude oil from ONGC pipeline and was attempting to transport the same in a vehicle carried with him or had committed theft of crude oil from the pipeline. These activities per se indicate that there was damage and attempt to cause damage to public property or to the property of ONGC.

10. Another contention has been that the statements of the witnesses are vague inasmuch as the date and time are not specified and that by so called activities of the petitioner on those occasions narrated by the witnesses public at large was not affected. I have examined the statements of four confidential witnesses.

11. Witness No.1 has in the opening portion stated about the temperament, nature and behaviour of the petitioner and his involvement in criminal activities. He has also stated about the petitioner forming gang and committing theft of crude oil from pipeline in Vadodara refinery of ONGC. He has likewise stated that the petitioner was regularly and openly keeping lethal weapons like Sword, Sticks, Rampuri knife and was making free use of the same and causing injuries to innocent persons. The incident narrated by this witness could not be registered on account of fear of the petitioner. Consequently, it is difficult to accept that no injury was caused by the petitioner from such deadly weapons. The activity of theft of crude oil from ONGC pipeline was also highlighted by this witness. He also stated that the petitioner was beating innocent people without their fault and he was spreading atmosphere of fear and terror paralysing public tranquillity and peace. He also made statement about one incident which took place before one and half years of recording his statement. Time of incident was given to be 5.30 or 6.00 p.m. When the incident took place before one and half years and no case was registered with the police, due to lapse of time and

memory, it was natural for this witness not to remember the date of the incident. He remembered the time of incident which to my mind is sufficient. Regarding this incident the witness stated that he was threatened by the petitioner that he gave information leading to his arrest for theft of crude oil of ONGC. Witness was abused. He was caught hold of and sword was brought from Maruticar and the witness was beaten. He rushed towards his house and closed the doors for safety. The doors of the witness were broken by the petitioner and thereafter he went in the village for safety. The villagers also came to the rescue of the witness and the villages were also chased by the petitioner. The witness stated that at that time commotion took place amongst people as also amongst children and lorry gallas and shops were closed. People got themselves hidden and some of them started running here and there for safety and in this way public peace was disturbed so also public tranquillity

12. Second witness likewise stated that three months before recording of his statement he was taking his friend to Jambusar village in his rickshaw for private work. When he was returning at about 1.30 p.m. or 2.00 p.m. in the night near village Mankan he noticed that something was being done in the pipeline of the ONGC. He stopped his rickshaw and asked the petitioner what he was doing. The petitioner became annoyed. He abused the witness and came running towards him with sword. A Jeep was standing nearby. He caught hold of the witness and abused. The witness ran for safety in village. The people of the village who tried to save the witness were also threatened and chased by the petitioner. They also went inside their houses and no body came out. Again public peace and tranquillity was disturbed.

13. Likewise the third witness stated that about three months prior to the recording of his statement he had gone to Jambusar village at about 1.30 A.M. to 2.00 A.M. in the night. He saw from the road that some one was doing mischief with valve of the ONGC pipeline. They stopped there. Seeing them, the petitioner and his associates abused and threatened him. Sword was shown to the witness. Witness ran towards Mankan village. The people in the village were awakened but due to fear and terror created from the activities of the petitioner and his associates those persons also remained in their houses and did not come out.

14. Witness No.4 also stated that about ten months before recording his statement similar incident in the night occurred.

15. Thus, after considering these statements, it cannot be said that the activities of the petitioner were not prejudicial for maintenance of public order. His activities at the time of those four incidents gave signal that nobody should obstruct, interfere or challenge the criminal activities of the petitioner or his associates from committing theft of crude oil from ONGC pipeline in Vadodara Refinery and if anybody dares to do so, he will face danger to his life and if somebody comes forward for help of such person he will also meet the same fate and consequences. The statements of four witnesses further show that at the time of those four incidents feeling of insecurity was certainly created in the mind

of the residents of the nearby village Mankan, that no one should question the criminal activities of the petitioner and his gang which were being repeated in late hours of night between 1.00 A.M. to 2.00 A.M. and if any body does so, he would feel insecure and would also face danger to his life. In view of these materials the Detaining Authority was justified on the strength of explanation to section 3(4) of the PASA, that the activities of the petitioner were prejudicial for maintenance of public order. The order of detention, therefore, cannot be struck down on this count.

16. The last ground has been that the representation of the petitioner dated 9.7.1998 was received by the District Magistrate, Vadodara on 20.7.1998 but it was forwarded to the State Government on 31.7.1998 and since there is no explanation for this undue detention of the representation and delay in forwarding the same to the State Government the detention order as well as continued detention has been rendered illegal. It was argued that there was about 12 days delay in forwarding the representation. The representation was received on 20.7.1998 and it was forwarded by the Detaining Authority to the State Government on 31.7.1998. Both these dates have to be excluded. The delay between 21.7.98 to 30.7.98 only remains to be explained and this delay will be of 10 days only and not 12 days delay. The delay before the date of receipt of representation viz. before 20.7.98 is not to be explained.

17. The learned Counsel for the petitioner has relied upon few unreported decisions of this Court and argued that delay in forwarding the representation by the Detaining Authority renders the detention order invalid. The first unreported case is Special Criminal Application No. 1535 of 1994 decided on 6.12.1994. In this case, the Detaining Authority had kept the representation in cold storage from 19.10.1994 to 26.10.1994 and on those facts it was held that the detention order was rendered invalid. The other case is Special Criminal Application No. 1496 of 1993 decided on 1.4.1994 in which the representation was received on 3.8.1993 and it was lying unattended on 4th & 5th August, 1993. It was placed before the proper authority thereafter. This delay was held to be violative of provisions of Article 22(5) of the Constitution of India.

18. Suffice it to say that delay in forwarding representation is fatal. Delay is delay and if there is inordinate delay it has to be explained. However, if some reasonable time was taken by the authority in forwarding the representation it cannot be said that there was delay which has infringed the petitioner's right flowing from Article 22(5) of the Constitution of India.

19. In the case before me, the Detaining Authority in para 10 of his counter affidavit has deposed that the representation dated 9.7.1998 was received in his office on 29.7.1998 and the same was sent to the State Government and also to Advisory Board on 31.7.1998. Thus, two days delay between 29.7.1998 to 31.7.1998 stands explained and it cannot be said to be inordinate delay. The counter affidavit of Shri J.R.Rajput, Under Secretary to the State Government also shows that the representation dated 9.7.1998 was received by the State

Government through forwarding letter dated 31.7.1998 of the District Magistrate.

20. Now remains explanation of delay between 20.7.1998 to 28.7.1998. In rejoinder affidavit the brother of the petitioner has mentioned that the representation was actually received in the office of the District Magistrate on 20.7.1998 and it is incorrect that the same was received on 29.7.1998. In support of this, xerox copy of the acknowledgment has been filed along with the rejoinder affidavit. It shows that some letter addressed to Shri Anil Mukim, District Magistrate, Vadodara was received in his office on 20.7.1998. This is acknowledgment from the post office. The additional counter affidavit was filed thereafter by the Detaining Authority. In para 3 of the additional counter affidavit it has been mentioned that the representation dated 9.7.1998 was received by his Personal Assistant on 20.7.1998. It was mis-sent. Hence it was redirected and was received in the proper office on 29.7.1998. Xerox copy of the register receiving such letters has also been filed along with this additional counter affidavit. The acknowledgment shows that the representation was addressed to Shri Anil Mukim, District Magistrate, Vadodara. The grounds of detention show that if the petitioner wanted to make representation to the Detaining Authority he should have sent the same at the following address :

"District Magistrate Shri, Vadodara"

21. This means that the representation of the petitioner should not have been sent by name to the District Magistrate but addressed simply to the District Magistrate, Vadodara. There is purpose behind such disclosure in the grounds of detention. The purpose is to enable the petitioner to send his representation so as to reach the Detaining Authority at the earliest. The District Magistrate has to attend so many official business and work in his office. It is not one office of the District Magistrate nor one clerk in his office who deals with the entire material and correspondence. The correspondence in preventive detention matters are dealt with by one section and it is for this reason that specific disclosure was made in the grounds of detention that the representation should be addressed to the District Magistrate, Vadodara by office and not by name.

22. Another reason is that if such letters are addressed by name and the District Magistrate is transferred then such registered letters are likely to be redirected to the District Magistrate wherever he has been transferred. It seems from para 3 of the additional counter affidavit that since it was addressed to Shri Anil Mukim, District Magistrate, Vadodara by name it was delivered to his Personal Assistant who found that it was mis-sent in the sense that it was not to be dealt with personally by Shri Anil Mukim but should have been gone to detention section or PASA section. In para 3 it was, therefore, stated by the Detaining Authority that this redirected representation reached proper section and place on 29.7.1998. If the petitioner himself chose to send the representation at an address different than that disclosed in the grounds of detention, he cannot be heard saying that there was delay in dealing with such representation. Afterall, large number of letters are received every day by Personal Assistant to District Magistrate which

is borne out from Annexure "I" to the additional counter affidavit and such letters are processed and then forwarded. It took time for about eight days. Thus, it cannot be said that there was inordinate delay under the circumstances of the case in forwarding the representation to the State Government. Thus, this ground is also insufficient for quashing detention order.

23. In view of the above discussions, I do not find any merit in this petition. The detention order is perfectly in accordance with law and it does not infringe any right under Article 22(5) of the Constitution of India. The writ petition, has therefore to be dismissed and is hereby dismissed.