

(1999) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 9523 of 1998

Vinod Khushal Tiwari

APPELLANT

Vs

Police Commissioner

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Bombay Police Act, 1951 — Section 135
Penal Code, 1860 (IPC) — Section 114, 323, 324

Citation : (2001) GLR 758

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

Bench : Single Bench

Advocate : Sunil C. Patel, for the Appellant; N.D. Gohil, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—In this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 16.1.1998 passed by the Police Commissioner, Surat City, u/s 3(2) of the Prevention of Anti-social Activity Act (for short "PASA") and has prayed for quashing of the said order and has also prayed that he may be released forthwith from illegal detention.

2. From the grounds of detention it seems that the petitioner was adjudged to be a dangerous person and his activities were found prejudicial for maintenance of public order. Accordingly the impugned order was passed. The grounds of detention further show that the material before the Detaining Authority for reaching the subjective satisfaction was two registered offences whose details were given in the grounds of detention and also statements of three confidential witnesses. Less drastic remedies were also considered by the Detaining Authority who found the same to be ineffective and not efficacious.

3. The detention order has been challenged by the learned Counsel for the petitioner on four grounds.

4. One of the grounds is that the place where the incident narrated by the witnesses took place was not disclosed in the grounds of detention hence the petitioner was prevented from submitting effective representation in his defence and this vagueness has caused material prejudice to the petitioner and has also violated fundamental right of the petitioner guaranteed by Article 22(5) of the Constitution of India. There is no merit in this contention. The first witness has disclosed the place of incident as his business place situated in Surat City. when privilege was claimed u/s 9(2) of the PASA the detaining Authority was not bound to tell the exact place where the place of business of the witness was situated. This could have enabled the petitioner to catch hold of the witness which would have been totally against the privilege claimed by the detaining Authority. Privilege was claimed by the detaining Authority on account of fear expressed by the witnesses. The second witness has also stated that the incident occurred within the area of Surat city. The third witness also narrated about the incident which took place in Surat city when the petitioner used the vehicle of the witness but refused to pay the fare. Thus, on this ground the detention order cannot be quashed.

5. The next attack has been that the detention order was passed on 16.1.1998 whereas the petitioner was arrested on 21.5.1998 and this delay has not been explained by the detaining Authority. This contention has also no force. There is no obligation on the part of the detaining Authority to explain the delay between the date of passing of detention order and the date of actual arrest. Learned A.G.P. from the record and from the official correspondence, kept in the record, argued that smelling passing of detention order against the petitioner he absconded and he could be arrested only on 21.5.1998. Counter Affidavit of the detaining Authority is also to the effect that the detention order dated 16.1.1998 could not be served on the petitioner and it could be served only when he was arrested on 21.5.1998 at 1.15 p.m. If the petitioner was not available to the Police for being arrested the detaining Authority was not obliged under any provision of PASA to explain the time taken between passing of the detention order and actual arrest of the petitioner. Thus, on this ground also the detention order cannot be quashed.

6. Another contention has been that there has been delay in passing the impugned order as computed from the date of commission of last offence and since this delay has not been explained the impugned order of detention has been rendered invalid. According to the grounds of detention last offence was committed by the petitioner on 11.10.1997. The three witnesses narrated about the incidents which took place on 10.10.1997, 1.11.1997 and 5.11.1997. The statements of the three confidential witnesses according to Para : 8 of the Counter Affidavit of the detaining Authority were record on 23.11.1997, 25.11.1997 and 28.11.1997 respectively. These statements were verified by the Assistant Commissioner of Police on 12.1.1998 and 13.1.1998 respectively. Thereafter the report was submitted to the detaining Authority who passed the impugned order on 16.1.1998. Thus, the delay is satisfactorily explained.

Without collecting complete material the Sponsoring Authority could not have submitted his report and the moment it was submitted expeditiously the order was passed by the detaining order. Thus, on this ground also the impugned order cannot be quashed.

7. The last ground has been that the activities of the petitioner were not prejudicial for maintenance of public order. Hence he could not be detained under PASA. The petitioner was found to be dangerous person by the detaining Authority within the meaning of Section 2(c) of the PASA. For reaching this subjective satisfaction there was cogent and sufficient materials before the detaining Authority. There were two registered offences in respect of incident dated 10.4.1997 which took place at 10.00 a.m. and incident dated 11.10.1997 which took place at 3.00 p.m. The cases under Sections 324, 323, 114 I.P. Code and Section 135 of the Bombay Police Act were registered as CR No. 64/97 and CR No.210/97. These activities were criminal activities punishable under Chapter : XVI of the I.P. Code. Besides these three confidential witnesses also gave statements highlighting the criminal activities of the petitioner. The petitioner was thus repeatedly and habitually committing offences punishable under Chapter : XVI of the I.P. Code. On the above material the detaining Authority was justified in arriving at subjective satisfaction that the petitioner was a dangerous person.

8. A dangerous person can be detained under the PASA only when his activities are found to be prejudicial for maintenance of public order. On this point the statements of three confidential witnesses have to be examined.

9. The first witness narrated about the incident dated 5.11.1997. The witness went to his place of business in Surat city area. The petitioner, along with his four companion, went there and demanded Rs.4000/- from the witness. The witness refused to pay money whereupon the petitioner caught hold of the collar of the witness, dragged him out and gave him severe beating with kicks and fists. To save the witness some persons came forward. Thereupon the petitioner gave signal to his companions who rushed towards these people holding knives in their hands. The members of public were beaten by the petitioner and his associates. The incident was of such nature that the shop keepers in the business area closed their shops, nearby residents rushed in their houses and closed the doors and windows. The traffic on the road was also disturbed. Atmosphere of fear was spread over the area. In spite of the severe beating the witness had not only to tolerate the pains of beating, but had also to part with Rs.1000/- to the petitioner. The petitioner threatened the witness that in case he would lodge complaint with the police his entire family would be finished.

10. The second witness narrated the incident which took place on 10.10.1997 at 7.00 p.m. He was passing through Surat City area. The petitioner and his two companions stopped him suspecting that the witness was a police informer. He was beaten with kicks and fists. Persons collected at the spot, some of them intervened to save the witness. At the instance of the petitioner his companion

duly armed with hockey, iron bars, etc., rushed towards the mob, as a result of which the people started running away. Larri-galla and shops in the nearby vicinity were closed one by one and the traffic on the road was completely disturbed. In spite of severe beating the petitioner was forced to part with Rs.500/- which he was having in his pocket. The petitioner took this amount and threatened the witness that in case police complaint is lodged or the incident is disclosed to any person then he would be murdered in such a way that even his dead body would not be traced.

11. The third witness stated about the incident dated 1.11.1997 which took place at 10.00 a.m. The petitioner and his three companions had gone to different place in the city in the vehicle of the witness. The vehicle was engaged till noon. The witness demanded fare whereupon the petitioner dragged the witness out of his vehicle and gave severe beating with fist blows. The witness shouted for help and thereafter persons from the nearby locality collected and intervened. The petitioner threatened the witness and the members of the public of being murdered. The petitioner ran towards crowd having knife in his hand. He was extending threat that whoever would come forward the knife would be pierced in his body. As a result of this threat people started running away, shops were closed and traffic was disrupted.

12. From the above statements it is clear that the incidents were of such nature which were prejudicial for maintenance of public order within the meaning of Explanation to Section 3(4) of the PASA. This explanation provides that 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.

13. From the statements of the three confidential witnesses it is clear that they were beaten; they were forced to part with the money, they were having with them and fare was not paid to the third witness, though his vehicle was engaged by the petitioner and his companion for half of the day till noon. Deadly weapons were also shown.

14. The learned Counsel for the petitioner relying upon the Apex Court's verdict in *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others*, argued that these activities cannot be said to be prejudicial for maintenance of public order. However, if the entire material on record including the grounds of detention is considered it can be said that the facts in this writ petition are different from the facts of *M.J. Shaikh's case (supra)*. From Para : 11 at Page : 1276 of *M.J. Shaikh's case* it appears clear that the first incident was that the petitioner purchased certain goods worth Rs.500/- from a business man and on demand of the price of goods the petitioner dragged him out on the public road and not only gave beating to him but also aimed his revolver towards

the people who gathered over there. Thus, in this case in the first instance no injury was caused to any member of the crowd who gathered at the spot. Only revolver was shown. In the second incident in the above case against the petitioner, the person who was suspected to be police informer giving information about the activities of the petitioner was beaten by the petitioner and the persons who collected at the spot were also threatened. No injury was caused to any member of the public. On these facts the Apex Court held that it was incident between the petitioner and witnesses in which public at large was hardly affected and public order was not disturbed. However, in the case before me the statements of confidential witnesses reveal altogether different story.

15. From the statement of first witness it can be said that the petitioner demanded Rs.4000/- from the witness. The witness refused to pay the amount whereupon the petitioner caught hold his collar and dragged him out and gave severe beating with kicks and fists. To save the witness some persons collected at the spot. Thereafter signal was given by the petitioner to his companions who rushed towards the spot holding knives in their hands. They started beating the members of the public on account of which they ran away for safety. The situation was so tense that shop keepers feeling sense of insecurity closed their shops and nearby residents rushed in their houses and closed the doors and windows of their houses. The traffic on the road was also disrupted. The matter did not end there. The witness was being constantly beaten and when he could not tolerate the beating he gave Rs.1000/- to the petitioner and then he was relieved. The petitioner further gave threat to the witness that in case he would lodge any complaint with the police his entire family would be finished. From this incident it seems that not only the witness was beaten but the members of the public, who collected at the spot to save the witness were also beaten. The magnitude of the incident was such that the members of the public were forced to run for safety and to enter in their houses. Residents of the nearby locality likewise entered their houses for safety and closed their doors and windows. The traffic on the road was also disturbed. Still the beating continued and Rs.1000/- were taken from the petitioner. Threats was also given to the petitioner that he and his entire family would be finished in case police is informed. This threat implies that the witness should not have recourse to law. If such situation was created it can be said that feeling of danger to the life of the witness and to his family members was certainly created and similar sense of fear, insecurity and danger in the mind of general public of the locality was also created. Such situation can certainly be said to be situation prejudicial for maintenance of public order within the meaning of Explanation to Sub.Section 4 of Section 3 of the PASA.

16. The second incident narrated by the other witness is that he was stopped by the petitioner and his two companions on the suspicion that he was police informer. The petitioner and his companions were armed with hockey and iron bars. They rushed towards mob, which collected to save the witness, as a result of which people started running away. In this incident also larri-gallas and shops

in the nearby vicinity were closed one by one and the traffic on the road was completely disrupted. The witness was being beaten. A sum of Rs.500/- was taken from him by the petitioner. It was an incident at 7.00 p.m. The witness was again threatened that in case the police is informed of the incident then he would be murdered in such a way that his dead body would not be traced. Such severe threat was not hollow threat and in face of such threat danger, alarm and feeling of insecurity in the mind of the witness and also in the mind of the persons, who collected to save the witness, was likely to be created. This incident also created situation prejudicial for maintenance of public order.

17. The third incident is also of similar nature. Here the vehicle of the witness was used by the petitioner from 10.00 a.m. to noon. When the witness demanded the fare the petitioner refused to pay the same. He dragged the witness out of his vehicle and gave severe beating with fist blows. The witness shouted for help. Persons from the vicinity gathered. They intervened to save the witness. The petitioner threatened not only the witness who was beaten, but also the members of the crowd that they would be murdered. They were forced to run for safety. The petitioner told his companions to disperse the crowd. The petitioner was holding knife in his hand and was extending threat that whosoever would come forward the knife would be pierced in his body. Due to the fear of the petitioner people started running for safety, shops were closed, the traffic was disrupted and atmosphere of fear and terror was created in the locality. This was also a situation where public at large was affected. Sense of insecurity alarm and danger was created in the locality. It can, therefore, be said to be incident prejudicial for maintenance of public order.

18. In view of above discussions it can be said that the activities of the petitioner were prejudicial for maintenance of public order. He was rightly found to be dangerous person from the material on record. Thus, the detention order passed by the detaining Authority was perfectly valid.

19. In view of the above discussions the impugned order of detention, being perfectly valid, cannot be quashed. The writ petition, therefore, is devoid of merit and is bound to fail. The writ petition is accordingly dismissed.