
**Rajeshbhai Alias Rajubhai Laljibhai Sakhiya Throu Trushaben Rajeshbhai
Sakhiya Vs State Of Gujarat**

R/Special Civil Application No. 8789 Of 2020

Court: Gujarat High Court

Date of Decision: Nov. 6, 2020

Acts Referred:

Constitution Of India, 1950 " Article 226#Gujarat Prevention Of Anti Social Activities Act, 1985 " Section 2(c), 3#Indian Penal Code, 1860 " Section 114, 143, 147, 149, 186, 188, 269, 323, 341, 384, 427, 452, 504, 506(2), 507(2)#Disaster Management Act, 2005 " Section 51#Prevention of Money Laundering Act, 2002 " Section 5, 33, 40, 42

Hon'ble Judges: Sangeeta K. Vishen, J

Bench: Single Bench

Advocate: K S Chandrani, Akash Chhaya

Final Decision: Allowed

Judgement

Sangeeta K. Vishen , J

1. By this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the detention order bearing

No.J/MAG/PASA-Case No.10/2020 dated 04.06.2020 passed by the respondent No.2 in exercise of the powers conferred under the provisions of the

Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "Act of 1985") detaining the petitioner as dangerous person

as defined under clause (c) of Section 2 of the Act of 1985. It has been further prayed that the petitioner detenue be released forthwith.

2. Mr. K. S. Chandrani, learned advocate for the petitioner, submitted that the order dated 04.06.2020, has been passed on the basis of the three First

Information Reports registered with the respective police stations. So far as one of the First Information Reports is concerned, the same is registered

on 20.05.2020 with Gondal City Police Station for the offences punishable under Sections 186, 188, 269 of the Indian Penal Code as well as Section 51

of the Disaster Management Act, 2005; the second First Information Report is registered on 18.12.2019 for the offences punishable under Sections

504, 114, 506(2) of the Indian Penal Code and Section 5, 33, 40, 42 of the Prevention of Money Laundering Act, 2002 and; the third First Information

Report was registered on 27.02.2020 for the offences punishable under Sections 143, 147, 149, 323, 341, 384, 427, 452, 504, 506(2) and 507(2) of the

Indian Penal Code. It is submitted that so far as the First Information Report registered on 20.05.2020 for the offences under the Indian Penal Code

as well as Disaster Management Act, 2005 is concerned, this court in similar set of facts, has held that looking to the definition of dangerous person as

defined in Section 2(c) of the Act of 1985, there is no mention of the provisions of Section 51 of the Disaster Management Act, 2005 as well as some

of the provisions of the Indian Penal Code do not fall under Chapter XVI and XVII of the Indian Penal Code. It is submitted that this court, therefore,

quashed and set aside the detention order by holding that the detaining authority failed to consider two important aspects viz. non-mentioning of the

offence punishable under Disaster Management Act and certain provisions of the Indian Penal Code, which do not fall under Chapter XVI and XVII

of the Indian Penal Code. So far as other two First Information Reports are concerned, it is submitted that one case is relatable to the offences

punishable under Prevention of Money Laundering Act, 2002 and the third one was registered in the month of February, 2020. It is submitted that

assuming without admitting that the petitioner is involved in the alleged offences, looking to the allegations made in the First Information Reports, the

act of the petitioner, cannot be construed as affecting the public at large inasmuch as, the said activity has nothing to do with the public order. It is

thus urged that the order of detention dated 04.06.2020 deserves to be quashed and set aside.

3. Mr. Akash Chhaya, learned Assistant Government Pleader for the respondent-State has supported the detention order passed by the authority, and

submitted that sufficient material and facts were found during the course of investigation and the same was supplied to the detaining authority. That

the petitioner detainee is in habit of indulging into the activity as defined under Section 2(c) of the Act of 1985. Considering the facts of the case, the

detaining authority has rightly passed the order of detention and the same does not deserve to be interfered with and the petition may be rejected.

4. Heard the learned advocates for the respective parties through video conference.

5. Considering the facts and circumstances of the case, it appears that the subjective satisfaction arrived at by the detaining authority cannot be said to

be legal, valid and in accordance with law inasmuch as, the offences alleged in the first information reports cannot have any bearing on the public

order as required under the Act of 1985. It is also required to be noted that other relevant penal laws are sufficient enough to take care of the

situation. The allegation as have been levelled against the petitioner detainee, cannot be said to have relevance for the purpose of bringing the petitioner

detenue within the meaning of Section 2(c) of the Act of 1985. It is well settled that unless and until the material is there on the record to suggest that

a person has become a threat and menace to the society so as to disturb even tempo of the society and that all social apparatus is in peril disturbing

public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(c) of the Act.

6. As is discernible from the record, the First Information Report dated 20.05.2020, is for the offence punishable under the Indian Penal Code as well

as Disaster Management Act, 2005. Clearly, allegations in the First Information Report is commission of breach of the Notification dated 18.05.2020.

Looking to the definition of the dangerous person as contained in Section 2(c) of the Act of 1985, there is no mention of the provisions of Section 51 of

the Disaster Management Act, 2005 and so far as other offences are concerned, they do not fall within the Chapter XVI and XVII of the Indian

Penal Code. Therefore, the detaining authority could not have considered the First Information Report dated 20.05.2020 and 18.12.2019 to term the

petitioner as a dangerous person as defined in Section 2(c) of the Act of 1985. So far as First Information Report dated 27.02.2020 is concerned, the

same was registered in the month of February 2020; whereas, the order is passed in the month of June 2020 and therefore, the link has been snapped.

7. The Apex Court in the case of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police & Ors. reported in (1995) 3 SCC 237 has

held that the provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible

that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Section 3 of the Act

of 1985 is, therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who for special

reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them. It is held that power under the

Act of 1985 to detain a person should be exercised with restraint and great caution. In order to pass an order of detention under the Act of 1985,

against any person, the detaining authority must be satisfied that he is a 'Dangerous Person' within the meaning of clause (c) of Section 2 of the Act of

1985 who habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or XVII of the

Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. The Apex Court has also held that long lapse of time

between the alleged prejudicial activity and the detention order loses its significance inasmuch as the said prejudicial conduct should be proximate in

point of time and there has to be a rational connection with the conclusion that the detention was necessary for maintenance of public order.

8. The Apex Court in the case of Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852], clearly drawing the distinction between 'law and

order' and 'public order' by observing thus :

“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.”

9. In view of the aforementioned discussion, I am inclined to allow the petition inasmuch as, two First Information Reports dated 20.05.2020 as well as

18.12.2019 are for the offences which are not relatable to Chapter XVI and XVII of the Indian Penal Code and therefore, Section 2(c) by no stretch

of imagination can be attracted. So far as third First Information Report is concerned, the same was filed in the month of February 2020 and the order

is passed in the month of June 2020. The offences alleged against the petitioner cannot have any nexus with a breach of maintenance of public order

and the authority cannot have recourse under the Act for, no other relevant and cogent material exists for invoking the powers under Section 2(c) of

the Act of 1985.

10. In the result, the petition is allowed. The order No.J/MAG/PASA-Case No.10/2020 dated 04.06.2020 passed by the respondent No.2-detaining

authority is hereby quashed and set aside. The petitioner “detenue is ordered to be set at liberty forthwith, if not required in connection with any

other case.

11. Rule is made absolute. Registry to communicate the copy of operative portion of the judgment to the concerned authorities through fax/e-mail,

forthwith.

12. Direct service is permitted.