Kaushik @ Bobby Rasikbhai Parmar Through Leelaben Rasikbhai Parmar Vs State Of Gujarat

Court: Gujarat High Court

Date of Decision: Aug. 22, 2022

Acts Referred: Gujarat Prevention Of Anti Social Activities Act, 1985 â€" Section 2(c), 3(2)
Indian Penal Code, 1860 â€" Section 114, 294(B), 323, 324, 427
Gujarat Police Act, 1951 â€" Section 135(1)

Hon'ble Judges: S.H.Vora, J; Rajendra M. Sareen, J

Bench: Division Bench

Advocate: Bharatkumar H Oza, Jigar B Oza, Divyangana Jhala

Final Decision: Allowed

Judgement

Rajendra M. Sareen, J

1. Heard learned advocates appearing for the respective parties.

2. The present petition is directed against order of detention dated 21.5.2022 passed by the respondent Ã¢â‚¬" detaining authority in exercise of powers

conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short Ã¢â‚¬Å“the ActÃ¢â‚¬) by detaining the petitioner Ã¢â‚¬

detenue as defined under section 2(c) of the Act.

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground

of registration of the offences under Sections 324, 323, 294(B), 427, 114 etc. of the IPC and u/s 135(1) of the G.P. Act by itself cannot bring the case

of the detenue within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detenue submits that illegal activity

likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at

the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in

pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of

public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity

of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life

of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for whole system

to exist as a system governed by rule of law by disturbing public order.

4. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence

was found during the course of investigation, which was also supplied to the detenue indicate that detenue is in habit of indulging into the activity as

defined under section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and

detention order deserves to be upheld by this Court. The State has chosen not to file counter affidavit/reply so as to disturb the action invoking

provisions of the PASA Act. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of

the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of

reply/counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

5. Having heard learned advocates for the parties and 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 FIR/s cannot

have any baring on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that

the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of

section 2(c) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as

to disturb the whole 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. Except general statements, there is no material on record which shows that

the detenue is acting in such a manner, which is dangerous to the public order. Now, this brings us to criminal activities of a detenue petitioner, which

are said to have taken place prior to 3 to 4 months of detention order dated 21.5.2022, the petitioner threatened/beaten the witnesses. Taking the

aforesaid incidents and allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. Said

incidents were directed against single individual having no adverse effect prejudicial to maintenance of public order, disturbing the tempo of life and

peace of the locality. Such casual and isolated incident will hardly have any implication, which will effect the tempo of life so as to jeopardise the

public order. So, the acts committed by the petitioner itself are not detriment to his own gravity, but it is potential of the act, which matters. In this

connection, it will be fruitful to refer to a decision of the Supreme Court in Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852], where

the distinction between 'law and order' and 'public order' has been clearly laid down. The Court observed as follows :

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

6. In recent decision of the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Shaik Nazeen v/s. State of Telanga and Ors and Syed Sabeena v/s. State of

Telangana and Ors. rendered in Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 2022 and Criminal Appeal No.909 of 2022 (@ SLP (Crl.)

No.4283 of 2022 dated 22.06.2022, the HonÃ¢â‚¬â„¢ble Supreme Court has made following observations in para 17 and 18 :-

Ã¢â‚¬Å“17. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution

should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention

law is not the proper remedy under the facts and circumstances of the case.

18. In fact, in a recent decision of this Court, the Court had to make an observation regarding the routine and unjustified use of the Preventive

Detention Law in the State of Telangana. This has been done in the case of Mallada K. Sri Ram Vs. The State of Telangana & Ors. 2022 6 SCALE

50, it was stated as under: Ã¢â‚¬Å“17.It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the

Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public orderand relying on stale materials while passing the

orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one

year itself.

These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We

direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate

the fairness of the detention order against lawful standards.Ã¢â‚¬â€‹

6.1 Same fact situation exists in the State and number of detention orders under PASA are passed day in and day out, relying on stale material and

without drawing distinction between Ã¢â‚¬Å“law and orderÃ¢â‚¬â€‹ problem and Ã¢â‚¬Å“public orderÃ¢â‚¬â€‹ problem as mentioned under the PASA Act.

7. In view of above, we are inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of

maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power

under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention dated 21. 5.2022 passed by the

respondent Ã¢â‚¬" detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other

case.

8. Rule is made absolute accordingly. Direct service is permitted.