Vijay Bhavanbhai Chaturbhai Sumesara Thro Bhavanbai Chaturbhai Sumesara Versus Vs State Of Gujarat & Ors.

Court: Gujarat High Court

Date of Decision: July 29, 2024

Acts Referred: Gujarat Prevention of Ant Social Activities Act, 1985 â€" Section 2(b), 2(c), 3, 3(1), 3(4)
Indian Penal Code, 1860 â€" Section 379
Constitution of India, 1950 â€" Articles 22

Hon'ble Judges: Ilesh J. Vora, J; Vimal K. Vyas, J

Bench: Division Bench

Advocate: Jimit P Shah, Shruti Pathak

Final Decision: Allowed

Judgement

Vimal K. Vyas, J

1. The present petition is directed against the order of detention dated 30.06.2024 passed by the respondent Ã¢â‚¬" detaining authority in exercise of

powers conferred under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢), whereby the

respondent - detaining authority has detained the petitioner - detenue as defined under Section 2(c) of the Act.

2. Heard the learned advocate appearing for the petitioner Ã¢â‚¬" detenue and learned APP appearing for the respondent Ã¢â‚¬" State.

3. Learned advocate for the petitioner - detenue submits that the impugned order of detention is required to be quashed and set-aside since the

detaining authority has passed the order of detention solely on the ground of registration of two FIRs; (i) for the offences under Sections 379 of the

Indian Penal Code (Old); (ii) for the offences under Sections 379 of the Indian Penal Code (Old), respectively, and that by itself cannot bring the case

of the petitioner - detenue within the purview of definition under Section 2(c) of the Act. Learned advocate for the petitioner Ã¢â‚¬" detenue further

submitted that the illegal activities alleged to have been carried out or likely to be 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 a breach of law and order. Further, except the statements of the witnesses and the

registration of the above FIRs, no other relevant and cogent material is on record which would show that the alleged anti-social activities of the

petitioner - detenue fall under the category of breach of public order. Learned advocate further submitted that it is not possible to hold, on the basis of

the facts of the present case, that the activities of the petitioner - detenue with respect to the criminal cases had affected and disturbed the social

fabric of the society, eventually which would become threat to the very existence of the normal and routine life of the people at large or that on the

basis of the registration of criminal cases, the petitioner - detenue had put the entire social apparatus in disorder, making it difficult for the whole

system to exist, as a system governed by rule of law, by disturbing the public order. It is also submitted that the detaining authority has also not applied

its mind to the fact that the petitioner Ã¢â‚¬" detenue is released on bail in all the offences.

4. Learned APP for the respondent-State has supported the detention order passed by the detaining authority and has submitted that sufficient

materials and evidences were found during the course of investigation and the same were even supplied to the petitioner Ã¢â‚¬" detenue, which indicate

that the detenue is in the habit of indulging into activities 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 the same deserves to be upheld by this Court.

5. Having heard the learned advocates appearing for the respective parties and considering the documents and materials available on record, prima

facie, it is found 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 FIRs cannot have any bearing 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 levelled against the petitioner - detenue cannot be said to be germane for the

purpose of bringing the petitioner - detenue within the realm of the meaning of Section 2(c) of the Act. Unless and until there is some material 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

goes in peril disturbing the public order at the instance of such person, in that circumstances, it cannot be said that the detenue is a person which would

fall within the meaning of Section 2(c) of the Act. Except general statements, there is no other material on record which shows that the petitioner -

detenue has acted in such a manner which has become dangerous to the public order.

6. At this juncture, we would like to put reliance upon certain case-laws of the Apex Court, wherein the Apex Court has crystalized the position of

law.

6.1 In the case of Vijay Narain Singh vs. State of Bihar, reported in 1984(3) SCC 14, the Apex Court asserted that when a person is enlarged on bail

by a competent court, great caution should be exercised in scrutinizing the validity of an order of preventive detention, which is based on the same

charge which is to be tried by the criminal court. It is also noticed by this Court that the order does not refer to any application for cancellation of bail

having been filed by the State authorities.

6.2 In a recent decision of the Apex Court rendered in the case of Shaik Nazneen vs. The State of Telanga and others and Syed Sabeena vs. The

State of Telangana and others, reported in (2023)9 SCC 633, the Apex Court has made the following observations in paragraphs Nos.17 and 18, which

read thus :

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

6.3 The distinction between disturbance to Ã¢â‚¬Ëœlaw and orderÃ¢â‚¬â„¢ and disturbance to Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢ has been clearly settled by a Constitution

Bench in the case of Dr.Ram Manohar Lohia vs. State of Bihar, reported in AIR 1966 SC 740. The Apex Court has held that every disorder does not

meet the threshold of disturbance to public order unless it affects the community at large. The Constitution Bench held thus :

Ã¢â‚¬Å“51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a

person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public

disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad

spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression

Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢ take in every kind of disorders or only some of them ? The answer to this serves to distinguish Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢

from Ã¢â‚¬Ëœlaw and orderÃ¢â‚¬â„¢ because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder.

Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder.

They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public

order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of

law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects

order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and

order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the

public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of

maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢ in the rulings of this Court (earlier cited) was said to comprehend disorders of less

gravity than those affecting Ã¢â‚¬Ëœsecurity of StateÃ¢â‚¬â„¢, Ã¢â‚¬Ëœlaw and orderÃ¢â‚¬â„¢ also comprehends disorders of less gravity than those affecting

Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle

representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but

not public order just as an act may affect public order but not security of the State. By using the expression Ã¢â‚¬Ëœmaintenance of law and

orderÃ¢â‚¬â„¢ the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.Ã¢â‚¬â€‹

6.4 In the case of Mallada K. Sri Ram vs. The State of Telangana, reported in (2023)13 SCC 537, the Apex Court has observed as under :

Ã¢â‚¬Å“15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the Ã¢â‚¬Ëœmaintenance

of public orderÃ¢â‚¬â„¢. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months

prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining

authority, especially when there have been no reports of unrest since detenu was released on bail on 8 January 2021 and detained with

effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot

be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive

detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional

safeguards against abuse. Article 22 the Constitution was specifically inserted and extensively debated in the Constituent Assembly to

ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The

case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the

detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal

law.Ã¢â‚¬â€‹

6.5 It will be fruitful to refer to a decision of the Apex Court in the case of Pushkar Mukherjee and others vs. The State of West Bengal, reported in

AIR 1970 SC 852, where the distinction between Ã¢â‚¬Ëœlaw and orderÃ¢â‚¬â„¢ and Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢ has been clearly laid down. The Court observed as

follows :

Ã¢â‚¬Å“Does the expression Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢ 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€‹

7. In case of K.Nageswara Naidu vs. Collector and District Magistrate, Kadapa, reported in 2012(13) SCC 585, the Apex Court has reiterated thus :

Ã¢â‚¬Å“4. After the aforesaid decision, the same issue again came up for consideration before a two-Judge Bench of this Court in Munagala

Yadamma v. State of Andhra Pradesh and Ors., (2012) 2 SCC 386, where a similar order had been passed under the 1986 Act. In the said

case, the detention order had been passed in regard to the detenu, who had been indulging in illicit distillation of liquor and the same

submission was advanced on behalf of the State, that recourse to ordinary law would involve more time and would not be an effective

deterrent in preventing a person from indulging in prejudicial activities. In the said decision while considering the decision, both in Rekha's

case (supra) and Reddeiah 's ease (supra) and also in Yumman Ongbi Lemhi Leima's case (supra), it was held that the personal liberty of an

individual is the most precious and prised right guaranteed under the Constitution in Part III thereof. It was observed that the State has

been granted the power to curb such rights under criminal laws and also under the laws of preventive detention, which, therefore, are

required to be exercised with due caution, as well as upon a proper appreciation of the facts as to whether such acts are in any way

prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of

such an order. It was also observed that no doubt the offences alleged to have been committed by the Appellant are such as to attract

punishment under the Andhra Pradesh Prohibition Act. but such punishment would have to be awarded under the said laws and taking

recourse to preventive detention laws would not be warranted. It had been emphasised that preventive detention involves detaining of a

person without trial in order to prevent him/ her from committing certain types of offences, but such detention cannot be made a substitute

for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes, which the detenu may have

committed. It had also been observed that after all, preventive detention. in most cases, is for a year only and cannot be used as an

instrument to keep a person in perpetual custody without trial.Ã¢â‚¬â€‹

8. Thus, the Apex Court has emphasized that preventive detention involves detaining a person without the trial, in order to prevent him/her from

committing certain types of offences, but such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of

their normal functions of investigating the crimes, which the detenue may have committed. It had also been observed that after all preventive

detention, in most of the cases, is for a year only and cannot be used as an instrument to keep a person in perpetual custody without the trial.

9. It is well-settled that the freedom of human-being is supreme and the same cannot be curtailed or restricted unless the detention is extremely

necessary and the activities of the detenue affect the Ã¢â‚¬Ëœpublic orderÃ¢â‚¬â„¢. While passing the detention orders, the authorities have to be mindful of the

characteristic of Articles 21 and 22 of the Constitution of India. Article 22 cannot be read in isolation but must be read as an exception to Article 21,

and such exception can apply only in rare and exceptional cases. The Apex Court and this Court have, time and again, articulated that the personal

liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to

show that the impugned detention meticulously accords with the procedure established by law.

10. In view of the above, we are inclined to allow this petition, because simplicitor registration of FIRs 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 the

power under Section 3(1) of the Act.

11. In the result, the present petition is allowed and the impugned order of detention dated 30.06.2024 passed by the respondent Ã¢â‚¬" detaining authority

is hereby quashed and set-aside. The petitioner - detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule made absolute

to the aforesaid extent. Direct service is permitted.