Sagar Nathabhai Bachubhai Solanki Thro Nathabhai Bachubhai Solanki Versus Vs State of Gujarat & Ors.

Court: Gujarat High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Gujarat Prevention of Anti-Social Activities Act, 1985 â€" Section 2(b), 2(c), 3, 3(4) Bharatiya Nyaya Sanhita, 2023 â€" Section 54, 114, 303(2), 317(2), 379, 411

Hon'ble Judges: Ilesh J. Vora, J; Hemant M. Prachchhak, J

Bench: Division Bench

Advocate: Munjal V Acharya, Kanva Antani

Final Decision: Allowed

Judgement

Ilesh J. Vora, J

1. The petitioner herein namely Sagar Nathabhai Bachubhai Solanki came to be preventively detained vide the detention order dated 30.11.2024

passed by the Police Commissioner, Ahmedabad, as a Ã¢â‚¬Å“dangerous personÃ¢â‚¬ as defined under Section 2(c) of the Gujarat Prevention of Anti-social

Activities Act, 1985 (herein after referred as Ã¢â‚¬Ëœthe Act of 1985).

2. By way of this petition, the petitioner has challenged the legality and validity of the aforesaid order.

3. This Court has heard learned counsel Mr. M. V. Acharya and Mr. Kanva Antani, learned Additional Public Prosecutor for the respective parties.

4. Learned advocate for the detenue submits that the grounds of detention has no nexus to the Ã¢â‚¬Å“public orderÃ¢â‚¬, but is a purely a matter of law and

order, as registration of the offence cannot be said to have either affected adversely or likely to affect adverse the maintenance of public order as

contemplated under the explanation sub-section (4) of Section 3 of the Act, 1985 and therefore, where the offences alleged to have been committed

by the detunue have no bearing on the question of maintenance of public order and his activities could be said to be a prejudicial only to the

maintenance of law and order and not prejudicial to the maintenance of public order.

5. On the other hand, learned State Counsel opposing the application contended that, the detenue is habitual offender and his activities affected at the

society at large. In such set of circumstances, the Detaining Authority, considering the antecedents and past activities of the detenue, has passed the

impugned order with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad.

6. Having considered the facts as well as the submissions made by the respective parties, the issue arise as to whether the order of detention passed

by the Detaining Authority in exercise of his powers under the provisions of the Act of 1985 is sustainable in law?

7. The order impugned was executed upon the petitioner and presently he is in Jail. In the grounds of detention, a reference of three criminal cases i.e.

(i) for the offence under Sections 379, 411, 114 dated 14.10.2023 with Narol Police Station, (ii) for the offence under Sections 303(2), 317(2), 54 dated

23.11.2024 with Narol Police Station, (iii) for the offence under Sections 303(2), 317(2), 54 dated 24.11.2024 with Narol Police Station, registered

against the petitioner under the BNS/Indian Penal Code was made and further it is alleged that, the activities of the detenue as a Ã¢â‚¬Å“dangerous

personÃ¢â‚¬ affects adversely or are likely to affect adversely the maintenance of public order as explained under Section 3 of the Act of 1985.

Admittedly, in all the said offences, the petitioner was granted bail.

8. After careful consideration of the material, we are of the considered view that on the basis of three criminal cases, the authority has wrongly

arrived at the subjective satisfaction that the activities of the detenue could be termed to be acting in a manner Ã¢â‚¬Ëœprejudicial to the maintenance of

public orderÃ¢â‚¬â„¢. In our opinion, the said offences do not have any bearing on the maintenance of public order. In this connection, we may refer to the

decision of the Apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad, 1989 Supp (1) SCC 322, wherein, the

detention order was made on the basis of the registration of the two prohibition offences. The Apex Court after referring the case of Pushkar

Mukherjee Vs. State of Bengal, 1969 (1) SCC 10 held and observed that mere disturbance of law and order leading to detention order is thus not

necessarily sufficient for action under preventive detention Act. Paras-17 & 18 are relevant to refer, which read thus:

Ã¢â‚¬Å“17. In this connection, we may refer to a decision of this Court in Pushkar Mukherjee v. State of West Bengal, where the distinction

between `law and order' and `public order' has been clearly laid down. Ramaswami, J. speaking for the Court observed as follows:

10. ""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.

18. In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti- social activities of the

petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the

petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of

public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot

be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of

section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as

laid down in sub-section (4) of section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the

maintenance of public order We have carefully considered the offences alleged against the petitioner in the order of detention and also the

allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of

insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public

order. The order of detention cannot, therefore, be upheld.Ã¢â‚¬‹

9. For the reasons recorded, we are of the considered opinion that, the material on record are not sufficient for holding that the alleged activities of the

detenue have either affected adversely or likely to affect adversely the maintenance of public order and therefore, the subjective satisfaction arrived

at by the detaining authority cannot be said to be legal, valid and in accordance with law.

10. Accordingly, this petition stands allowed. The order impugned dated 30.11.2024 passed by the respondent authority is hereby quashed. We direct

the detenue to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service permitted.