

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.5258 OF 2019

Mr. Nitin Bhimabhai Patel – Detenu	]	
Age 25 yrs., Indian Inhabitant,	]	
Residing at Talav Falia	]	
Moti Daman, Through his wife Mrs. Anvi	]	
Nitin Patel, Age adult.	]	 Petitioner.
Versus		
1] Union Territory of Daman & Diu	]	
Through the Public Prosecutor,	]	
Daman & Diu	]	
	]	
2] The District Collector and Magistrate,	]	
Administration of U.T. of Daman & Diu,	]	
Collectorate, Daman 396220	]	 Respondents.

Mr. Amit Patel for the Petitioner.
 Mr. H S Venegaonkar for Respondent No.1.
 Mr. A D Khamkedkar, APP for the Respondent/State.

CORAM : S. S. SHINDE, J
 N. B. SURYAWANSHI, JJ
 DATE : 26th NOVEMBER 2019

JUDGMENT : (Per S S SHINDE, J)

1 Rule, having regard to the challenge raised, made returnable forthwith and heard with the consent of the learned counsel for the parties.

2 By this Writ Petition under Articles 226 and 227 of the Constitution of India, the Petitioner challenges the orders dated 14/03/2019 bearing No.COL/DMN/WEST/2019/1669 AND COL/DMN/EST/2019/27409

dated 17/03/2019, and 1/home 253(2) PASA-2018-19/97 dated 20/03/2019 passed by the Detaining Authority thereby detaining the Petitioner/Detenu in jail.

3 It is the case of the Petitioner/Detenu that he was asked to attend the coastal police station in the morning of 14/03/2019 and upon inquiry, subsequently, he was detained and shown as arrested from his residence. It is further the case of the Petitioner/Detenu that at that time no detention order was served upon him, but his family was informed by the police that the Petitioner/Detenu was arrested under the Prevention of Anti-Social Activities (for short “the PASA Act”). On the next date i.e. on 15/03/2019 the police had served detention order dated 14/03/2019 at the Petitioner’s house. The Petitioner/Detenu has been lodged in the Sub-Jail, Fort Area, Moti Daman. Both the detention orders dated 14/03/2019 and 17/03/2019 have been served upon the Petitioner/Detenu. It is also his case that, at the time of detention the Petitioner/Detenu was unaware of the grounds of his detention.

4 It is the case of the Respondents that the Petitioner/Detenu has been involved in several cases of unlawful assembly resulting in breach of peace and assault on Govt. servant, and his activities are pre-judicial to the maintenance of public order. Respondent No.2 vide letter dated 16/03/2019 has submitted a report thereby seeking an action to be initiated against the

Petitioner/Detenu under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 i.e. the PASA Act. It is the case of the Respondents that the Petitioner/Detenu is known offender and has had a violent history, and there is a strong apprehension that he can influence the election and create such an environment in which the ordinary citizen may not feel secure and safe.

5 Thereafter statement of confidential witness was also recorded by the Collector which reveals that the Petitioner/Detenu is involved in anti-social activities which are pre-judicial to the maintenance of the public order and his actions are causing a felling of insecurity among the general public.

6 On the basis of the information received from the Station House Officer, Moti Daman Police Station and other records, Respondent No.2 herein i.e. the District Collector and Magistrate, Daman in exercise of powers conferred under Section 3(2) of the PASA Act by order dated 14/03/2019 has issued direction to the Superintendent of Police, Daman to arrest the Petitioner – Nitin Patel, and detain him at Sub Jail, Moti Daman till further directions as per law. In compliance of the said order dated 14/03/2019, the Superintendent of Police, Daman had detained the Petitioner under Section 2(C) of the PASA Act.

7 By communication dated 17/03/2019, Respondent No.2 informed

the Petitioner/Detenu about the reasons of his arrest under Section 9(1) of the PASA Act. In the said communication the authority has referred four criminal cases registered against the Petitioner as the basis for passing detention order.

8 The Competent Authority satisfied that there is sufficient ground for detention of the Petitioner and, by order dated 20/03/2019, in exercise of powers conferred under Section 3(3) of the PASA Act approved the order dated 14/03/2019 passed by the Collector, Daman.

9 Heard the learned counsel for the parties at length. The learned counsel for the Petitioner/Detenu submits that out of the four criminal proceedings relied upon by the authority for arriving at a subjective satisfaction, in three criminal proceedings the Petitioner/Detenu has been acquitted after conducting trials, and in one criminal case he is yet to be charge-sheeted. It is submitted that there is no challenge to those orders and the said orders have achieved finality. He therefore submits that there are no active criminal antecedents against the Petitioner/Detenu. It is also submitted that the Petitioner/Detenu is enlarged on bail in the pending case. The learned counsel for the Petitioner further submits that considering the sole pending case against the Petitioner cannot be a ground against the Petitioner/Detenu for passing detention order. He further submits that there is no material before the authority to show that the Petitioner/Detenu is continuously breaking the

law, and therefore, the detention of the Petitioner/Detenu is illegal. He submits that there is no material against the Petitioner before the authority to arrive at a subjective satisfaction. He further submits that for a similar offence alleged one Mr. Sandeep Patel who was also detained under Section 3(2) of the PASA Act, he preferred Writ Petition being No.1611 of 2019 wherein by order dated 09/09/2019 the Division Bench of this Court had set aside the detention order. It is submitted that the Petitioner came to be detained by describing him as a dangerous person, and his detention is warranted as he can influence the election. He therefore submitted that the detaining authority has erred in holding that the activities of the Petitioner/detenu are prejudicial to the maintenance of the public order. The learned counsel for the Petitioner in support of his aforesaid submissions sought to place reliance on the judgment of the Hon'ble Supreme Court in Abdul Razak Nannekhan Pathan v/s. Police Commissioner Ahmedabad¹. The learned counsel for the Petitioner therefore submits that the detention order is vitiated by non-supply of relevant material to the Petitioner/detenu in order to enable him to make effective representation to the State. He further submits that the vital and important documents were not placed before the detaining authority, and even the detaining authority did not consider the orders acquitting the Petitioner/Detenu from the criminal proceedings as well as the order granting bail to him. He therefore submits that while passing the detention order against the Petitioner/detenu, the detaining authority did not apply its mind

¹ 1990(2) GLH 137 (SC)

while passing the detention order of the Petitioner/Detenu. He lastly submits that the Petition may be allowed.

10 On the contrary, the learned counsel for Respondent No.1 supports the impugned orders/communication passed by the authority. He submits that there are four criminal cases registered against the Petitioner and those were for serious offences affecting and disturbing the public place in society. That the Petitioner is involved in commission of several offences against general public, industrialist, shopkeepers etc. It is also submitted that the Petitioner/Detenu is involved in anti-social activities which are pre-judicial to the maintenance of public order and his actions are causing a felling of insecurity among the general public. He therefore submits that the authority, after considering the material placed before it, in particular the four criminal proceedings registered against the Petitioner/Detenu, has rightly arrived at subjective satisfaction and has rightly passed impugned orders detaining the Petitioner/detenu. The learned counsel for Respondent No.1 therefore submits that the Petition may be dismissed.

11 We have considered the submissions advanced by the learned counsel for the parties. With their able assistance we have perused the pleadings and grounds taken in the Writ Petition, annexures thereto as well as the impugned orders/communication passed by the authority.

12 The reason of arrest under Section 9(1) of the PASA Act informed by the detaining authority to the Petitioner/Detenu by communication dated 17/03/2019 is that the activities of the Petitioner/Detenu are pre-judicial to the maintenance of public order. It appears that the authority did not give any reason to the Petitioner at the time of his arrest on 14/03/2019. Thereafter by communication dated 17/03/2019 the detaining authority in support of the detention order dated 14/03/2019 has given the reason that the Petitioner/Detenu is involved in four serious criminal proceedings alleged to have been registered against him. The said criminal proceedings are being Cr. Nos.22/07; 18/08; 08/10 and 16/18. The said criminal proceedings are in respect of attempt to murder, criminal trespass, assault etc. It is also stated in the said communication dated 17/03/2019 that a statement of confidential witness was taken where it was informed that the Petitioner/Detenu tries to intimidate local persons and, the Petitioner/Detenu does not have fear of law, and he behaves like a don and his behaviour is intimidating to the local populace.

13 The learned counsel for the Petitioner invites attention of this Court to the orders acquitting the Petitioner/Detenu of the three criminal proceedings registered against him. It needs to be mentioned that out of four cases, the Petitioner/Detenu has been acquitted in three cases after conducting

trials, and in so far as one criminal cases is concerned, it is informed that the same is pending, however, he is yet to be charge-sheeted, and the Petitioner/Detenu is granted bail in the said case.

14 It is clear from the aforesaid discussion that the base of passing detention order is the four criminal cases alleged to have been registered against the Petitioner/Detenu. However, for arriving at subjective satisfaction and passing detention order, registration of criminal proceedings is not sufficient to hold that public order is adversely affected. The material produced before the detaining authority must be sufficient to demonstrate that the public order is adversely affected. As indicated herein above, out of four cases, the Petitioner has been acquitted in three cases after conducting trials, and in one case he is on bail. It is important to mention at this stage that mere registration of criminal cases is not sufficient for the detaining authority to pass detention order against a detenu by holding that the activities of the detenu are prejudicial to the maintenance of public order. In this context it is necessary to consider the provisions of Section 3(4) of the PASA Act which explains the meaning of term ‘Public Order’. The said Section 3(4) reads thus :-

- “3 (1).....
 (2).....
 (3).....
 (4) For the purpose of this Section, a person shall be deemed to be “acting in any manner prejudicial to the maintenance of public order” when such person is

engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order”.

Explanation – 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 action thereof or a grave or widespread danger to life, property or public health.”

It is clear from the aforesaid provision that while passing the detention order, the detaining authority must get itself satisfied that the material placed before it is sufficient to demonstrate that public order is adversely affected because of the activities of the Petitioner/Detenu.

15 Now coming to the judgment cited by the learned counsel for the Petitioner in Abdul Razak Nannekhan Pathan’s case (supra) wherein the Hon’ble Supreme Court has held that the grounds of detention must not be vague but must be specific, relevant in order to enable the detenu to make effective representation. It is also held that merely on consideration of the other three criminal cases which are under investigation and are yet to be decided, the detaining authority cannot come to his subjective satisfaction that the detenu was a dangerous person who habitually indulges in committing offences referred to in S.2(c) of the Act. The relevant excerpt of Paragraphs 10

of the said judgment is reproduced herein under for ready reference :-

“In such circumstances, it is not at all possible for the detenu to make a proper and effective representation except merely denying the alleged grounds of detention as mandatorily required under Art.22(5) of the Constitution of India. This Article confers on a detenu two fundamental rights namely, (1) that the detaining authority has to communicate to the detenu the grounds as early as possible on which the order of detention has been made and secondly the right to make an effective representation against the said order. This obviously requires that the grounds must not be vague but must be specific, relevant in order to enable the detenu to make an appropriate and effective representation against the same before the Advisory Board as well as before other authorities including detaining authority. The grounds and the averments made in the grounds which were served on the detenu are Vague and as such they are violative of the Art.22(5) of the Constitution of India. It is pertinent to refer in this connection the decision reported in Pushkar Mukharjee & ors. v. The State of West Bengal, [1969] 2 SCR 635 at page 641.

"Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of the statutory right of making a representation, that again may make the order of detention invalid."

In the context of the facts of the present case, paragraph 13 of the said judgment is also relevant and the same is reproduced herein under for ready reference :-

“13 The second crucial question that falls for consideration in this case is whether the grounds of detention particularly referring to the seven criminal cases are relevant and germane grounds for passing of an

order of detention under s. 3(1) of the PASA Act. All the seven criminal cases mentioned relate to problem of law and order and not public order in as much as they disclose cases relating to particular persons which has nothing to do with the maintenance of public order. As has already been said herein before that out of the seven criminal cases, two have been compounded and in the fourth case the criminal charges have not been proved against the petitioner as such he was acquitted. The third case being under s. 135 of the Bombay Police Act does not fall within the purview of the s. 2(c) of the Act and it is 'confined to a private individual. The other three cases which are under investigation also relate to assault to private individuals and they have nothing to do with the disturbance of even tempo of the life of the community or of men of a particular locality nor does it affect the even flow of life of the public as a whole. Section 3(1) clearly mandates that the order of detention can be made only when the State Government or its authorized officer has come to a subjective satisfaction that a person is required to be detained in order to prevent him from acting in any manner prejudicial to the maintenance of the public order. Sub-section embodies a deeming clause to the effect that a person should be deemed to act in any manner prejudicial to the maintenance of public order when such person is engaged in any activities as a dangerous person which affect adversely or are likely to affect adversely the maintenance of public order. Explanation to clause 4 further 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 of life, property or public health. Coming to this particular case, the criminal cases mentioned in the grounds of detention do not refer to any dangerous, harmful or adverse act or alarm which gives rise to a feeling of insecurity for the general public amongst the persons of a locality. The criminal cases are confined to certain private individuals and it is merely a law and order problem and it has nothing to do with maintenance

of public order. Its reach and effect is not so deep as to affect the public at large. It does not create or tend or create any panic in the mind of people of particular locality or public in general nor it affects adversely the maintenance of public order. There is nothing to show that the above activities of the petitioner have affected or tended to affect the even tempo of life of the community. An act may create a law and order problem but such an act does not necessarily cause an obstruction to the maintenance of public order. The difference between 'the law and order and public order has been very succinctly stated by this Court in *Dr. Ram Manohar Lohia v State of Bihar and ors.*, [1966] 1 SCR 709 at page 746 wherein it has been stated that:

"It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State" "law and order" also comprehends disorders of less gravity than those affecting "public order". 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. But using the expression, "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of Indian Rules."

16 In the case in hand, the grounds of arrest have not been given to the Petitioner at the time of his arrest, and the grounds and/or reasons stated in the communication dated 17/03/2019 for detention of Petitioner are vague and, there is nothing on record to show that the prejudicial activities of the Petitioner/detenu affected the maintenance of public order. Article 22(5) of the Constitution of India provides that the detaining authority must, as soon as

may be, communicate to the detenu the grounds on which the order of preventive detention has been made. It also provides that the authority shall afford the detenu, the earliest opportunity of making representation against the said order. It is therefore clear from Article 22(5) of the Constitution of India that the Petitioner/detenu is entitled for grounds of detention as well as earliest opportunity for making representation against the detention order.

17 For the purpose of determining the Petitioner/Detenu as dangerous person, it is relevant to take into consideration the provisions of S.2 (C) of the PASA Act which defines dangerous person as a person who habitually commits or attempts to commit offences punishable under Chapter XVI or Chapter XVII of Indian Penal Code or any of the offences under Chapter V of the Arms Act. As already indicated herein above that from the four criminal cases, in three cases the Petitioner/Detenu has been acquitted, and in fourth case he has obtained bail order. Moreover, the Petitioner/Detenu being acquitted in the said cases, the same could not be taken into consideration by the detaining authority while passing the detention order. Merely because the criminal cases were registered against the Petitioner/Detenu cannot be a ground for detaining authority to come to his subjective satisfaction that the Petitioner is a dangerous person and he was involved in illegal/anti social activities which are prejudicial to maintenance of public order. The alleged crimes registered against the Petitioner are individual cases.

18 As can be seen from the impugned orders, the detaining authority had considered the fact of registration of criminal cases for passing detention order. The Petitioner/Detenu has been acquitted in three criminal proceedings out of the four cases mentioned in the communication dated 17/03/2019, and in the fourth case the Petitioner has obtained bail order. The detaining authority has lost sight of the said fact while arriving at subjective satisfaction. Consequently non-consideration of those acquittal of the Petitioner by the detaining authority would certainly amount to non-application of mind which vitiates the impugned orders.

19 The learned counsel for the Petitioner invites attention of this Court to the judgment of the Division Bench of this Court (Coram : Indrajit Mahanty & A M Badar, JJ) dated 09/09/2019 in Writ Petition No.1611 of 2019. In similar fact situation, the Division Bench of this Court by the said order has allowed the said Writ Petition and set aside the detention order of the Petitioner in the said case.

20 In view of aforesaid discussion, we are unable to sustain the detention order passed by the detaining order against the Petitioner. The detaining authority did not apply its mind while passing the detention order of the Petitioner/Detenu and the same stands vitiated. The Writ is accordingly

allowed. The impugned orders of detention of the Petitioner passed by the Collector/District Magistrate, Daman dated 14th March, 2019 and dated 17th March 2019 and order passed by Deputy Secretary (Home) dated 20th March 2019 are quashed and set aside. The Petitioner to be released forthwith, if he is not required in any other offence or proceeding. Rule is made absolute in the above terms with no order as to costs. The Writ Petition stands disposed of accordingly.

[N. B. SURYAWANSHI, J]

[S. S. SHINDE , J]