IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7516 of 2020
With
CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 7516 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE UMESH A. TRIVEDI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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RAJ ASHOKBHAI THAKARSHIBHAI PATEL THROU FATHER ASHOKBHAI THAKARSHIBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
MR. HARDIK MEHTA, ASST. GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

Date : 18/12/2020

ORAL JUDGMENT

[1.0.] This petition under Article 226 of the Constitution of India is directed against the order of preventive detention bearing No.PCB/DTN/PASA/373/2020 dated 03.06.2020 made by the

Commissioner of Police, Ahmedabad City, in exercise of powers under subsection (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as “the Act”) whereby, the petitioner has been detained as 'Dangerous Person'. The aforesaid order came to be executed upon the petitioner on the very same day and the petitioner is thus detained under the Act since then.

[2.0.] Mr. Vaibhav Vyas, learned advocate for the petitioner submitted that to brand the petitioner as dangerous person under Section 2(c) of the Act, the detaining authority has relied on three offences registered at (I) C.R.No.I-11191031200789 of 2020 with Sahibaug Police Stataion, Ahmedabad for the offence punishable under Sections 380 and 114 of the Indian Penal Code, (II) C.R.No.I-11191031200871 of 2020 with Sahibaug Police Station, Ahmedabad, for the offence punishable under Sections 380 and 114 of IPC and (III) C.R.No.I-11191031200882 of 2020 with Sahibaug Police Station, for the offence punishable under Sections 379 and 114 of the Indian Penal Code. He has further submitted that the detaining authority has relied on three cases along with statements of two anonymous witnesses to arrive at a subjective satisfaction that the activities of the petitioner is prejudicial to the maintenance of public order and therefore the preventive detention order has come to be passed against the petitioner. However, he has submitted that mere registration of FIR/s for the offence under the Indian Penal Code by itself would not render the petitioner liable in absence of any credible material to conclude that his activities are prejudicial to the maintenance of public order. Referring to the impugned order, it is pointed out that the subjective satisfaction of the detaining authority is based upon the fact that the petitioner is a dangerous person as defined under Section 2(c) of the Act. It is submitted that merely because a person can be termed as dangerous person unless his

activities are found to be prejudicial to the maintenance of public order, a person cannot be preventively detained.

[3.0.] It is further submitted that the statements of anonymous witnesses relied on by the authority is also not correct and it has been recorded on 02.06.2020 and verified on 03.06.2020. However, the detention order has come to be passed on that very same day. It is further submitted that except the incidence of personal violence mentioned by the anonymous witnesses to them, rest of the part of statements are verbatim same and it is recorded stereotyped and therefore it is submitted that the subjective satisfaction recorded by the detaining authority based on statements of anonymous witnesses is vitiated.

[4.0.] As against that, Mr. Hardik Mehta, learned AGP, submitted that, after considering the material placed before the detaining authority and careful examination thereof, the order of preventive detention is passed by the detaining authority. He has further submitted that the detaining authority having found the activities of the petitioner prejudicial to the maintenance of public order, has passed the order of preventive detention and no interference is called for, as subjective satisfaction has been validly recorded. He has submitted that, as a matter of law, it cannot be held that the preventive detention order cannot be passed only on registered offence. If registration of offence clearly discloses breach of public order or activities of the petitioner, which is prejudicial to the maintenance of public order, a preventive detention order can be passed by the authority against the petitioner. Therefore, he has requested this Court to dismiss the petition.

[5.0.] Having heard the learned advocates for the appearing 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 bearing on the breach of public order and the penal laws are sufficient enough to take care of the situation. Except the allegations, there is no credible material on record, which shows that the petitioner is acting in any manner prejudicial to the maintenance of public order. It will be fruitful to refer to a decision of the Supreme Court in the case of ***Pushkar Mukherjee &Ors*** Vs. ***The State of West Bengal*** reported in ***AIR 1970 SC 852*** where the distinction between 'law and order' and 'public order' has been clearly laid down:

> "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."

[6.0.] Thus, the activities of the petitioner, based on registered offences as also the statements of anonymous witnesses cannot be

said to be in any manner prejudicial to the maintenance of public order and therefore the subjective satisfaction arrived at by the detaining authority is vitiated and is required to be set aside.

[7.0.] Considering the submissions made by the appearing parties, it appears that the detaining authority has verified the statements of anonymous witnesses on 03.06.2020, which were recorded on 02.06.2020 and having found the fear of witness genuine from the petitioner has claimed the privilege for not disclosing the identity and address of the witnesses. Co-incidentally, on the very same day, an order of preventive detention came to be passed. Except the incidence of personal violence to the said witnesses rest of the part of statements are verbatim, more or less, same. It appears that, not only the recording of statements of anonymous witnesses but the verification thereof are also a mere formality. If it is not incorrect for what is stated in it certainly it creates doubt about genuineness of the manner and method of recording and verifying the statements. Therefore, subjective satisfaction recorded by the detaining authority based on such statements of anonymous witnesses and verification thereof is vitiated, no man of a normal prudence would record the order of preventive detention based on such statements verified.

[8.0.] Referring to the facts of the registered cases, the detaining authority has stated that from the dead bodies of persons, who have died due to COVID-19 in the Civil Hospital, he has committed theft of valuable belongings from the dead body. The activities, even if taken into consideration of committing theft of valuable belongings from the dead body, cannot be said to be affecting or likely to affect the maintenance of public order.

[9.0.] Thus, the subjective satisfaction arrived at by the detaining authority is vitiated. For the foregoing reasons, the petition is allowed. The impugned order of detention bearing No.PCB/DTN/PASA/373/2020 made by the respondent No.2 herein – the Police Commissioner, Ahmedabad City, dated 03.06.2020, is hereby quashed and set aside and the petitioner – detenue is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute.

[10.0.] In view of disposal of this petition, the connected Civil Application/s is also disposed of.

(UMESH A. TRIVEDI, J)

PATEL ILA KANTIBHAI / LALJI DESAI