IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8651 of 2020

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NARESH @ GUGHO KESHUBHAI DHAKHADA THROUGH HIS BROTHER HARESHBHAI KESHUBHAI DHAKHADA

Versus

THE STATE OF GUJARAT & 2 other(s)

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Appearance:
MALAYKUMAR S PATEL(8901) for the Petitioner(s) No. 1
MR MANRAJ BAROT, ASST GOVERNMENT PLEADER/PP(99) for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 18/12/2020

ORAL ORDER

1. By way of this petition under Article 226 of the Constitution of India, the petitioner, has challenged the legality of the order of detention dated 06.07.2020 passed by respondent authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("P.A.S.A Act" for short) by detaining the detenu as a "dangerous person" with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of public order.

2. I have heard the arguments advanced by learned advocate for the petitioner and also learned AGP.

2.1 Learned advocate for the petitioner has vehemently submitted that there are only two FIRs pertaining to offences under IPC, which cannot be termed as so grave that the petitioner be branded as dangerous person and therefore, it is urged that the detention order may be set aside.

3. Per contra, learned AGP, has vehemently objected the present petition and submitted that two FIRs are already filed pertaining to offences under IPC, Learned AGP has supported the impugned order of detention passed by respondent authority and submitted that the detenu is a "dangerous person" and sufficient material was found during the course of investigation, indicating that the detenu is in habit of indulging himself into illegal activities, as defined under Section 2 (c) of the PASA Act and therefore, considering the facts of the case, the detaining authority has rightly passed the order of detention, which deserves to be upheld by this Court.

4. Having heard learned counsel for the parties and having gone through the material on record, now, the question remains for consideration in this petition is whether the order of detention deserves to be quashed. From the records, it is difficult to conclude that the alleged incidents have any direct bearing on public order or it may be termed as an activity by which the petitioner could be branded as a habitual offender. There is nothing on record to arrive at the conclusion that the activities of the petitioner had disturbed public order in any area. The alleged offences registered against the petitioner are individual in nature and it cannot be said that law and order situation would be affected by the activities of the petitioner. All the statements recorded during the course of investigation are general in nature and therefore, the alleged incidents wherein the detenu was involved, have no adverse effect prejudicial to the maintenance of public order disturbing the peace of the society. Hence, the detenu cannot be branded him as a “dangerous person” within the meaning of Section 2 (c) of PASA Act.

5. In this backdrop, it would be apposite to refer to the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner reported in 1995 (3) SCC 237, wherein the Apex Court has observed thus:

> "6. With a view to deal with the aforementioned submissions advanced by the learned counsel for the petitioner and to examine the legality/validity of the impugned order of detention it would be appropriate to look into the relevant provisions of the Act in question under which the detention order has been passed. It may be pointed out that the Act provides for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order. In the present case having regard to the grounds of detection the detaining authority on being satisfied that the detenu - petitioner was a 'dangerous person' within the meaning of clause (C) of Section 2 of the Act and passed the order of detention. Section 2(C) of the Act reads as under: "Dangerous person" means a person, and either by himself or as a member or leader of a gang habitually commits or attempts to commit or abetes the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959".
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> Here it would also be appropriate to reproduce the relevant part of Section 3 of the Act as under:-
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> "3(l)-The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained."
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> (2) If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Govern-ment is satisfied that it is necessary so to do, it may, by order in writing, direct that the District

Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1) exercise the powers conferred by the said sub-section".

(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 section thereof or a grave or widespread danger to life, property or public health.

7. A reading of the preamble of the Act will make it clear that the object of provisions contained in the Act including those reproduced above is to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities The provisions of the Act are intended to deal with habitual criminal dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and the moral fear of punishment for crime are not sufficient deterrents for them. Section 3 of the Act is, therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them, But this power under the Act to detain a person should be exercised with restraint and great caution. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is

a 'dangerous person' within the meaning of Section 2(C) of the Act who habitually commits, or attempts to commit or abetes the commission of any of the offences punishable under Chapter XVI or XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to sub- section (4) of Section 3 of the Act it is such 'dangerous person' who for the purpose of Section 3 shall be deemed to be a person 'acting in any manner prejudicial to the maintenance of public order' against whom an order of detention may lawfully be made.

8. The Act has defined 'dangerous person' in clause (C) of Section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abetes the commis-sion of any of the offences punishable under the chapters XVI or XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has however, not been defined under the Act, According to the Law Lexicon by P. Ramanatha Iyyar, Reprint Edition 1987 page 499 'habitually' means constant, customary & addicted to specified habit and the term habitual criminal may be applied to any one who has been previously convicted of a crime to the sentences and committed Jo prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edition page 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a 'dangerous person' unless there is material suggesting his complicity in. such cases which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalan Chari v. State of Kerala, AIR (1981) SC 674 this Court had an occasion to deal with expressions like 'bad habit', 'habitual', 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar, [1984] 3 SCC 14, this Court construed the expression 'habitually' to mean repeatedly or persistently and observed

> that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows that in order to bring a person within the expression 'dangerous person' as defined in clause (C) of Section 2 of the act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abeting the commission of offences which are punishable under Chapter XVI or XVII of the I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapters XVI or XVII of I.P.C, or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(C) of the Act."

6. In light of the above principles propounded by the Supreme Court in the above-cited judgment and considering the facts of the present case, the detaining authority has failed to substantiate that the alleged anti-social activities of the detenu adversely affect or are likely to adversely affect the maintenance of public order. The alleged activities of the detenu cannot be termed as dangerous to the public at large. As a result, the grounds for passing such detention order cannot be sustained and therefore, it deserves to be quashed and set aside.

7. In the result, present petition is allowed. The impugned order of detention dated 06.07.2020 passed by respondent authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute accordingly. Registry is directed to communicate this order to the concerned jail authority by fax/e-mail forthwith.

(BIREN VAISHNAV, J)

Divya / MARY VADAKKAN