IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8721 of 2020
With
CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 3 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 8721 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

==========

SALIM DAUDBHAI MANEK ALIAS MIYANA THROUGH HIS BROTHER ABBASBHAI DAUDBHAI MANEK
Versus
THE DISTRICT MAGISTRATE & 3 other(s)

==========

Appearance:
ISMAIL H SAMANI(9089) for the Petitioner(s) No. 1
VALIMOHAMMED PATHAN(6383) for the Petitioner(s) No. 1
MR HARDIK MEHTA AGP (1) for the Respondent(s) No. 1 to 4

==========

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

Date : 23/12/2020

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India is directed against the order of preventive detention dated 18.06.2020 made by the District Magistrate, Morbi, in exercise of powers under

sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') whereby, the petitioner has been detained as a' dangerous person'. The aforesaid order came to be executed upon the petitioner on same day i.e. 18.06.2020.

2. Mr. Valimohammed Pathan, learned advocate for the petitioner submitted that to brand the petitioner as a 'Dangerous Person' under Section 2(c) of 'the PASA Act', the authority has relied on two offences registered at (i) C.R.No.I-157/2019 for the offence punishable under Sections 406, 420, 120-B and 114 of Indian Penal Code registered with Morbi Taluka Police Station (IPC) on 25.10.2019 and (ii) C.R.No.I-11 of 2019 for the offence punishable under Section 406, 420, 120(B), 170, 171 and 34 of of IPC registered with Maliya Miyana Police Station on 25.03.2019.

3. Mr.Valimohammed Pathan, learned advocate for the petitioner further submitted that detaining authority has relied on two registered cases along with statement of one anonymous witness 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. He has further submitted that aforesaid two offences are very personal in nature and against the individual. It is further submitted that reading the FIR itself from nowhere it can be concluded that the activities of the detenue is prejudicial to the maintenance of public order and it does not disclose any threat to the public order. He has further submitted that at best the activities may be

in breach of law and order not the 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 'the PASA 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.

4. It is further submitted that if the activities of the petitioner was such that he is required to be preventively detained, the authority would have detained him without any further loss of time after the last offence committed and therefore, it is submitted that there is delay in passing the order of detention vitiating the subjective satisfaction recorded by the authority. It is submitted that the petitioner is ordered to be released on bail in latest case on 02.01.2020 whereas, the order of detention has come to be passed on 18.06.2020 and the statement of anonymous witness came to be recorded on 15.02.2020 and verified by the Deputy Superintendent of Police on 27.02.2020. In short, it is submitted that the subjective satisfaction of the detaining authority is vitiated on the ground of delay in passing the order independently, if not cumulatively, and therefore, it is required to be set aside.

5. As against that, Mr.Hardik Mehta, learned AGP, for the respondent-State supported the order of detention passed by the authority and submitted that detaining authority closely examined the proposal made by the sponsoring authority and upon being subjectively satisfied that the activities of the petitioner are prejudicial to the maintenance of public order has passed the impugned order, which is just, legal and proper and does not warrant any intervention by this Court.

6. 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 FIRs 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 C/SCA/871/2020 JUDGMENT 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."

7. The order of preventive detention is required to be quashed and set aside on the ground of inordinate delay in passing the order also. For the purpose of recording subjective satisfaction, the detaining authority has relied on two offences last of which is said to have been committed on 25.10.2019 whereas, the impugned order of preventive detention has come to be passed on 18.06.2020 approximately 8 months after the alleged last offence committed. As such, there is no explanation offered by the Respondents for the said delay. In absence of any explanation offered for the said inordinate delay, the live link between the alleged activities of the petitioner and the purpose for which the detention order is passed is snapped. Therefore, subjective satisfaction recorded by the detaining authority for the purpose of preventive detention stands vitiated. On this ground also, the order of preventive detention is required to be quashed and set aside.

8. Considering the two cases mentioned in the order of detention, it reflects that there is no issue at all with regard to disturbance of any public order and it is clear that mere registration of offences simplicitor will not reflect any breach of public order and it is only a question of law and order situation to be dealt with under the common law. The cumulative effect of the same along with the method and manner in which the statement of anonymous witness is recorded and verified, leads to only one conclusion that as such subjective satisfaction recorded by the detaining authority is invalid and no man of normal prudence would have passed an order of preventive detention based on such material. Therefore, it is liable to be quashed.

9. Though, this Court had already issued Rule on 28.7.2020 but there is no reply by the Authority and therefore, any attempt to salvage the situation offering any explanation that the activities are continuous based on registered offences as also statement of anonymous witness cannot be taken into account to explain the delay caused in passing the order of preventive detention. Hence, the subjective satisfaction arrived at by the authority is vitiated on this ground also and therefore, it is required to be set aside.

10. In view of the above, this petition is allowed. The impugned order of detention dated 18.06.2020 bearing No.J/MAG/PASA/CASE No.12 of 2020 passed by the District Magistrate, Morbi, Respondent No.1 herein is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute.

Order in CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 3 of 2020 In R/SPECIAL CIVIL APPLICATION NO. 8721 of 2020

In view of the disposal of the main matter, this Civil Application also stands disposed of.

(UMESH A. TRIVEDI, J)

PATEL ILA KANTIBHAI / Ashish