



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 181 OF 2021

Shri Suraj Lahanu Zimne

Age – 22 years

Occupation – Agriculture Labour

R/at- Patelpada, Village – Chisda

U.T. of Dadra and Nagar Haveli &

Daman & Diu 396 230

Petitioner

Versus

- 1 Union Territory of Dadra & Nagar
Havel and Daman & Diu
Through its Administrator
- 2 District Magistrate, Silvassa
U.T. of Dadra and Nagar Haveli &
Daman & Diu
- 3 PASA Advisory Board, Secretariat,
At – Moti Daman, Daman
- 4 Jailor, Sub-Jail
Silvassa, U.T. of Dadra & Nagar
Haveli & Daman & Diu

Respondents

Mr. Manoj Badgujar for the Petitioner.

Mr. Hiten S. Venegavkar for Respondent No. 1 – U.T.

Ms. S. S. Kaushik, APP for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 28th JULY 2023

JUDGMENT (PER : GAURI GODSE, J.) :

1. By this petition, the petitioner challenges the order of detention bearing No.ADM/Coll/CC/2019/PASA/74, dated 30th April 2020, issued by the Respondent No. 2- District Magistrate, Dadra and Nagar Haveli, Silvassa, in the exercise of the powers conferred under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1965 (“**the said PASA Act of 1965**”) for the detention of the petitioner.

2. Perusal of the order of detention indicates that the Detaining Authority has relied upon the complaint registered against the petitioner vide C.R. No. 8 of 2020 for the alleged offences punishable under sections 143, 147, 148, 149, 353, 332, 323, 341, 342, 336, 506, 186, 188, 269, 270 and 427 of the Indian Penal

Code, section 51(b) of the Disaster Management Act, 2005 and section 3 of Prevention of Damage to Public Property Act, 1964.

3. The order of detention further indicates that the allegation against the petitioner is that he led 200-300 persons to gather with sticks, canes, axes and stones with the intention to ambush the police vehicles and damage them. The detaining authority has recorded that the petitioner is involved in illegal and anti-social activities which are prejudicial to maintaining public order and causing insecurity amongst the general public.

4. The detention order further refers to a statement of a confidential witness alleging that the petitioner tried to instigate people to take law and order into their hands and that the petitioner's behaviour was intimidating to the local population. Thus, the detaining authority, by relying upon one C.R. registered against the petitioner and one statement of the confidential witness, passed the order of detention.

5. The learned counsel for the petitioner has raised various grounds to challenge the order of detention; however, has pressed into service ground (i) of paragraph 12 of the petition, which reads as under :

“(i) The detention order is also vitiated on the ground of non-supply of relevant material documents and information to the detainee in order to enable to make him effective representation. It may be noted that no other document other than the detention order was provided. Even the FIR on the basis of which detention order was passed and statements of witnesses were not provided to the detainee.”

6. Learned counsel for the petitioner submitted that none of the relevant material, documents, and information relied upon by the detaining authority was provided to the petitioner. The learned counsel submitted that even the FIR based on which the detention order was passed and the statement of the witness referred to in the detention order were not provided to the petitioner.

7. Learned counsel for the petitioner thus submitted that non-supply of the relevant material/documents and information relied

upon by the detaining authority vitiates the detention order as the petitioner could not make any effective representation. He submitted that the detention order is passed without any supporting documents, and thus the detention order is not sustainable. In support of his submission, the learned counsel relied upon this court's decision in the case of *Vishal Kanhaiyalal Shrimali Vs. Union Territory of Daman and Diu and Others* ¹

8. The learned counsel for the petitioner submitted that during the pendency of this petition, the petitioner is already released after undergoing the entire period of detention; however, the same would not render this petition infructuous, and he is entitled to challenge the validity of the order of detention. In support of his submission, he relied upon the decision of the Hon'ble Supreme Court in the case of *Competent Authority, Ahmedabad Vs. Amritlal Chandmal Jain and Others* ²

¹ Criminal Writ Petition No. 560 of 2023

² (1998) 5 SCC 615

9. Learned counsel for the petitioner, thus relying upon the aforesaid two decisions, submitted that non-supply of important and material documents to the petitioner has deprived the petitioner of making effective representation. He further submitted that perusal of the affidavit-in-reply filed by the detaining authority shows that the detention order is passed without any supporting documents; hence the same is not sustainable. Thus, the continued detention of the petitioner was illegal and impermissible. The petitioner, therefore, prayed for setting aside the order of detention, the same being illegal.

10. Learned counsel appearing for the respondents has relied upon the affidavit dated 12th July 2023 of Mr. Rajendra Prasad Meena, Superintendent of Police, Dadra and Nagar Haveli, in support of the detention order. Learned counsel for the respondent thus by relying upon the affidavit submitted that there was sufficient material before the detaining authority for passing the detention order. The learned counsel for the respondents has relied upon the contents of the order

of detention, which refers to the complaint filed against the petitioner and the allegations made against the petitioner.

11. We have considered the submissions made by both parties. We have perused the record. A perusal of the affidavit-in-reply does not show which material and documents were relied upon by the detaining authority at the time of passing the detention order. The detention order refers to C.R. No. 8 of 2020. The affidavit also further refers to the said C.R. However, it has not revealed how and when the copy was supplied to the petitioner. With respect to the confidential statement relied upon by the detaining authority, there are no details provided in the affidavit regarding the date and time of the recording of the confidential statement. The affidavit is bereft of any response with respect to the ground of challenge raised by the petitioner. A perusal of the affidavit indicates that the detaining authority passed the order in the absence of any material available for arriving at a subjective satisfaction for holding the petitioner as a dangerous person within the meaning of the said PASA Act.

12. Thus, a perusal of the detention order shows that the detaining authority has relied upon C.R. registered against the petitioner and one statement of a confidential witness. Learned counsel for the petitioner has raised a specific ground to challenge the order of detention by submitting that none of the documents relied upon by the detaining authority was supplied to the petitioner. A perusal of the affidavit does not provide for any particulars as to the date of supply and the manner in which the documents relied upon by the detaining authority were supplied to the petitioner. The affidavit on behalf of the detaining authority does not even reveal particulars of any statement of any confidential witness placed before the detaining authority. Thus, it is clear that in the absence of any material before the detaining authority, the order was issued to detain the petitioner. Such an order of detention clearly breaches the safeguards provided under Article 22 of the Constitution of India.

13. This court in the case of *Vishal Shrimali* was dealing with an order of detention which was passed in absence of any documents or material placed before the detaining authority, except for the

detention order nothing was furnished to the detenu. In the facts of the said case despite observation in the detention order that the same was passed upon perusal of the documents on record, learned Special Public Prosecutor in the said case was unable to produce before the court a single document on which the detaining authority had placed reliance. In fact the learned Special Public Prosecutor had fairly stated that there were no documents placed before the detaining authority. Thus considering the ground raised on behalf of the detenu for challenging the detention order this court held in paragraph 3.6 and 3.7 as under:

3.6 It is pertinent to note that preventive detention is an anticipatory measure and does not relate to an offence, whereas, criminal proceedings are initiated to punish a person for an offence committed by the offender. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted only when the executive is convinced on the basis of the material available and placed before it that detention is warranted to prevent the detainee (person detained) from acting in a manner prejudicial to acts as specified in the Act. Thus, there is a discretion vested with the Executive Authority

which has to be exercised in accordance with law. Under the detention law. Under the detention law, a person's greatest of human freedoms i.e. personal liberty is deprived and hence, it is imperative that the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical, is mandatory.

3.7 Having regard to the aforesaid, the detention orders clearly stand vitiated. The detention orders vis-a-vis the detenues in both the aforesaid petitions have been passed by the respondent No. 2 in a very casual and cavalier manner and reflect complete non-application of mind. In the facts, the subjective satisfaction arrived at by the Detaining Authority clearly stands violated, rendering the detention orders, illegal. It reflects complete non-application of mind in arriving at the satisfaction that the detenues were dangerous persons. As noted above, detention of a detainee is a serious matter, as the Supreme Court in the case of Union of India vs. Paul Manickam & Anr. (Supra) has observed in paras 8 to 11, as under :

8. It has been said that the history of liberty was largely been the history of observance of procedural safeguards. The procedural sinews strengthening the substance of the right to move the Court against executive invasion of personal liberty and the due dispatch of judicial business

touching violations of this great right is stressed in the words of Lord Denning as follows :

“Whenever one of the King’s Judges takes his seat, there is one application which by long tradition has priority over all other, Counsel has but to say : My Lord, I have an application which concerns the liberty of the subject and forthwith the Judge will put all other matter aside and hear it. It may be an application for a writ of habeas corpus, or an application for bail but whatever form it takes, it is heard first.” (Freedom under the Law, Hamlyn Lectures, 1949).

9. The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of States’ security, public order, disruption of national economic discipline etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions. In Smt. Icchu Devi v. Union of India (1980) 4 SCC 531, this judicial commitment was highlighted in the following words:

“The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade”.

“This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention.....”

10. In Vijay Narain Singh v. State of Bihar, Justice Chinnappa Reddy in his concurring majority view said :

“....I do not agree with the view that those who are responsible for the national security or for the maintenance of public order must be the sole Judges of what the national security or public requires. It is too perilous a proposition. Our Constitution does not give as carte blanche to any organ of the State to be the sole arbiter in such matters.”

“There are two sentinels, one at either end. The legislature is required to mark the law circumscribing the limits within which persons may be preventively detained and providing for safeguards prescribed by the Constitution and the Courts are required to examine, when demanded, whether there has been any excessive detention, that is whether the limits set by the Constitution and the legislature have been transgressed. (SCC p.19, para 1)”

11. *In Hem Lall Bhandari v. State of Sikkim – (1987) 2 SCC 9 (AIR at p.766), it was observed : (SCC p.14, para 12)*

“It is not permissible in matters relating to the personal liberty and freedom of a citizen to take either a liberal or a generous view of the lapses on the part of the officers.....”.

14. In the facts of the present case also nothing is shown to us that the material and documents relied upon by the detaining authority as recorded in the detention order was placed before the detaining authority. Thus there is merit in the ground of challenge raised by

the learned counsel for the petitioner that the detention order in the present case stands vitiated for non supply of documents relied upon by the detaining authority while passing the detention order. In fact in the present case the affidavit of the detaining authority shows that there was no material and/or documents before the detaining authority while passing the detention order. Thus the principles laid down by this court in the decision of *Vishal Shrimali* squarely apply to the facts of the present case.

15. The order of detention is dated 30th April 2020. We are informed that the petitioner has already undergone the period of detention and is released. Learned counsel for the petitioner submitted that though the petitioner has undergone the entire period of detention, it is necessary to quash and set aside the order of detention, which holds the petitioner a 'Dangerous Person' within the meaning of the said PASA Act. Learned counsel for the petitioner submitted that such an order of detention amounts to a breach of the petitioner's fundamental rights and concerns the petitioner's liberty.

Hence, he submitted that though the petitioner has completed the period of detention, the petition be allowed, and the detention order be set aside by holding the same to be illegal. The learned counsel for the petitioner has rightly relied upon the decision of the Hon'ble Supreme Court in the case of *Amritlal Chandmal Jain*. The Hon'ble Supreme Court in the case of *Amritlal Chandmal Jain* has held that release of the detenue during the pendency of the petition would not necessarily render the writ petition infructuous. Thus the Hon'ble Supreme court has held that the detenue cannot be made to suffer on the plea that he did not successfully challenge the order of detention. A challenge in writ of habeas corpus is in effect to the legality and validity of the ground on which the order of detention is made. Thus the principles of law laid down by the Hon'ble Supreme Court in the case of *Amritlal Chandmal Jain* squarely apply to the facts of the present case. Thus as held by the Hon'ble Supreme Court release of the detenue during the pendency of the writ petition would not render this writ petition to be infructuous.

16. Learned counsel appearing for the respondent does not dispute the position of law that even though the petitioner has undergone the entire period of detention, the petitioner is entitled to maintain the petition and seek to set aside the detention order.

17. Hence for the reasons stated above, the petition is allowed, and rule is made absolute in terms of prayer clause (b). According we pass the following order:

OPERATIVE ORDER

(i) The detenu has already served the entire period of detention.

(ii) Petition is allowed and the order dated 30.04.2020 (“Exhibit-F” to the Petition) passed by Respondent No. 2 - District Magistrate, Silvassa is quashed and set aside.

(iii) Rule is made absolute in the above terms.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.