

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1639 OF 2024

Chetnaben Manubhai Patel .. Petitioner

Versus

Union Territory of Dadra & Nagar .. Respondents
Haveli and Daman and Diu & Ors.

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Mr.Manoj Badgujar for the Petitioner.

Mr.Harsh Dedhia i/b Mr.H.S.Venegavkar for the Respondent
No.1.

Mr.J.P.Yagnik, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 09th JULY, 2024

P.C:-

1. Rule. Rule made returnable forthwith. With consent of the parties, Writ Petition is taken up for final hearing.

2. Being aggrieved by the order passed by the District Magistrate, Daman in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "**PASA Act**"), as extended to the Union territory of Dadra & Nagar Haveli and Daman & Diu, thereby directing, one Manoj @ Manu @ Mano @ Mano Langdo to be

detained, to prevent him from indulging in anti social activities prejudicial to the maintenance of the public order, his wife- Chetnaben Manubhai Patel has approached this Court, praying for issuance of writ for quashing and setting aside the said order of detention alongwith the order dated 16/04/2024 and for his release forthwith.

3. We have heard learned counsel Mr.Manoj Badgujar for the Petitioner and learned counsel Mr.Harsh Dedhia i/b Mr.Hiten Venegavkar for the Union Territory of Dadra & Nagar Haveli and Daman & Diu alongwith, other Respondent Authorities.

4. The Station House Officer of Coastal Police Station, Kadaiya, Daman received a report concerning the detenu and it was alleged that he had committed the offences punishable under Sections 341, 504 and 506 of the Indian Penal Code (for short, “IPC”). It was informed by the Complainant, who was engaged in the scrap business and his truck was wrongfully seized by the brothers of the detenu alongwith the other named persons and a telephone call was received by the Complainant from Manoj, where he was threatened and was asked to cease the operations and vacate the area. Despite the intimidation, when the victim refrained from making any complaint and ceased operations of his scrap business, after an year or so, he was encountered by Manoj and was verbally abused and threatened, which resulted in registration of C.R.No.7 of 2024, invoking relevant provisions of the Penal Code.

5. Taking note of the criminal background of the detenu since the year 2002, as he was found to be indulged in criminal activities for more than 21 years and was habitual offender, committing such offences, all the offences registered against him in Nani Daman Police Station as well as the offences registered in various police stations of Gujarat State, were also specifically taken into account by the detaining authority in coming to a conclusion that he is a bootlegger and is engaged in transporting liquor from Daman to various places in Gujarat State, resulting into number of FIRs being registered.

The detention order passed by the detaining authority has enlisted 5 FIRs registered in the Union Territory and also enlisted 22 FIRs registered in District Valsad, State of Gujarat. In addition, it also make reference to two other cases in form of PASA/0004/2019 initiated by Pardi Police Station, District Valsad, Gujarat and another case being PASA/0001/2020 initiated by Valsad Rural Police Station, Gujarat.

By referring to the distinct FIRs and the detention order passed against him in the year 2019 and 2020, and by exercising the power under PASA Act, the detaining authority clearly recorded as below :-

“AND WHEREAS, based on the contents of the FIRs, it is clear that Manoj @ Manu @ Mano and @ Mano Langado is a bootlegger who is transporting liquor from Daman to various places in Gujarat State. Therefore, numerous cases under the provisions of the Gujarat Prohibition Act of 1949 were registered against Manoj. Furthermore, it is also clear that two cases under the Gujarat Prevention of Anti-Social Activities Act, 1985, has been registered.”

6. The detaining authority inferred that from the activities committed by the detenu, it can be concluded that he is a

‘bootlegger’, who transport liquor in contravention of prevailing laws and he is also a ‘dangerous person’, who has attempted to commit many offences in contravention of the prevailing laws.

The District Magistrate, Daman, also formed an opinion that presence of such anti-social elements in the area is detrimental to the public peace and tranquility, social fabric and economic environment of Daman District and it is necessary to prevent his anti-social activities, which are prejudicial to the maintenance of public order, as such elements can cause danger to life and property and thus deserve to be detained.

7. This order is challenged by the wife of the detenu on various grounds and foremost ground pressed into service by the learned counsel for the Petitioner reads to the following effect :-

“a. It is respectfully submitted that the detention order mentioned at Sr. No. 19 of the Detention order has been quashed and set aside by the Gujarat High Court vide its order dated 28.02.2019 passed in Special Civil Application No. 3761 of 2019. It is pertinent to note that the aforesaid detention order at Sr. No. 19 was passed placing reliance upon FIR No. 152/ 2018 registered with Pardi Police Station, FIR No. 174 of 2018 registered with Pardi Police Station, FIR No. 200 of 2018 registered with Pardi Police Station, FIR No. 201 of 2018 registered with Pardi Police Station, FIR No. 228 of 2018 registered with Pardi Police Station, FIR No. 231 of 2018 registered with Pardi Police Station, FIR No. 523 of 2017 registered with Pardi Police Station and FIR No. 639 of 2017 of Pardi Police Station. While passing present detention order, the detaining authority has placed reliance upon the aforesaid PASA order at Sr No. 19 and these very offences mentioned above. It is submitted that once detention order mentioned at Sr. No. 19 is quashed by the High Court by issuing high

prerogative Writ like habeas Corpus or Certiorari, then grounds of the said order should not be taken into consideration either as whole or in part even along with the fresh grounds of detention for drawing the requisite subjective satisfaction to pass a fresh order because once the Court strikes down an earlier order by issuing rule, it nullifies entire order. The detention order is therefore bad in law.”

8. In support of the above ground, the learned counsel has invited our attention to the detention order, which has made reference to PASA/0004/2019, which is the order passed against the detenu under the Gujarat Prevention of Anti Social Activities Act, 1985.

9. The order rest on grounds, being annexed at Exhibit C, which reflect and reflect that the detaining authority noted that the detenu was engaged in anti-social activities, disturbing the maintenance of public order as stated in Section 3(4) of the Gujarat Prevention of Anti Social Activities Act, 1985 and refer to the offences under the Mumbai Police Narcotics Control Act, 1949 registered with Pardi Police Station.

By referring to the gist of the accusations faced by the detenu in each C.R. independently, the detaining authority arrived at a conclusion that he is a bootlegger and in the wake of the offences registered in the limits of the stated police stations, his activity of storing, smuggling and selling of foreign liquor in large quantities, adversely affected the standard of living and health of people and in turn, became hindrance in maintenance of the public order. It is, therefore, recorded that, unless immediately prevented from engaging in

anti-social activities, there is a possibility that he may get himself released on bail and continue the aforesaid activity and, since, despite taking action under the common law, his criminal activities could not be controlled, it was felt necessary to detain him, considering the available information against him.

10. The above order was challenged before the High Court of Gujarat at Ahmedabad and on 28/02/2019, the Gujarat High Court allowed the Petition by recording as under :-

“6. In view of above, I am inclined to allow this Petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act. In the result, the present petition is hereby allowed and the impugned order of detention No.DCB/MAG/PASA/04/2019 dated 16.2.2019 passed by the respondent-detaining authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case. Direct service permitted.”

11. The learned counsel for the Petitioner is perfectly justified in submitting that despite the order No.DCB/MAG/PASA/04/2019 having been set aside by the Gujarat High Court, the detaining authority has once again included the said detention order in arriving at subjective satisfaction that the detenu is a bootlegger.

Pertinent to note that this particular detention order form part of the material relied upon by the detaining authority in passing the impugned order of detention, while he considered various other FIRs registered against the detenu in

Pardi Police Station, District Valsad. Worth it to note that the FIRs at Sr. Nos.7, 8, 12 and 14 were also referred to in the earlier detention order, but when the order could not be sustained, as the detaining authority had failed to make out the case that the detenu has become threat and menace to the society and was disturbing the whole tempo of the society and mere registration of offences itself would not be sufficient to preventively detain him, for this very reason, the present detention order, without highlighting as to how and which of the activities of the detenu amount to disturbance to the public order, which is a necessary requirement before a detention action is initiated.

Before exercising the available power of detention, the detaining authority must be satisfied that the activities of the detenu are anti-social in nature and are detrimental to the public peace and tranquility, disturbing the social fabric of the city and instead merely enlisting the FIRs registered against him and forming an opinion based thereupon, including a previous detention order, which has been quashed and set aside, has definitely vitiated the subjective satisfaction of the detaining authority.

12. The affidavit filed by the District Magistrate, Daman, making a feeble attempt to justify the action, in no way, satisfy our conscious that the detaining authority has applied his mind to the material placed before him in arriving at a conclusion that the activities of the detenu are detrimental to the public order and deserve his detention.

The submission advanced that even if the detenu has got some relief in criminal matters from the Gujarat High Court, is not sufficient justification, as the purpose of detention laws is definitely distinct from trying an accused for the offences registered against him. The preventive action is initiated to prevent the detenu from committing further offences, detrimental to the public interest and the detaining authority must be satisfied about the need of detaining of a person preventively under PASA Act. The subjective satisfaction must be based upon the existing and valid material against the detenu and definitely when the detaining authority has taken into consideration a case registered under the PASA Act, which is quashed and set aside, reliance upon the same is clearly reflective of non application of mind by the detaining authority.

13. The Hon'ble Apex Court in *Chhagan Bhagwan Kahar Vs. N.L.Kalna & Ors.*¹, has clearly observed as under :-

"14. Under Section 15 of the Act, the expiry or revocation of an earlier detention order is not a bar for making a subsequent detention order under Section 3 against the same person. The proviso annexed to that Section states that in a case where no fresh facts have arisen after expiry or revocation of an earlier order made against such person the maximum period for which such person may be detained in pursuance of the subsequent detention order shall in no case extend beyond the period of 12 months from the date of detention under the earlier order. Chinnappa Reddy, J. in *Abdul Latif Abdul Wahab Sheikh v. B.K. Jha* speaking for the bench of this Court while dealing with Section 15 of the Act observed : (SCC p. 25, para 3)

"It, therefore, becomes imperative to read down Section 15 of the Gujarat Prevention of Anti-Social Activities Act, 1985 which provides for the making of successive orders of detention so as to bring it in conformity with Article 22 (4) of

1 (1989) 2 SCC 318

the Constitution. If there is to be a collision between Article 22(4) of the Constitution and Section 15 of the Act, Section 15 has to yield. But by reading down the provision, the collision may be avoided and Section 15 may be sustained.”

14. In the wake of the expressed pronouncement on the aforesaid subject, when the detaining authority has taken into consideration an earlier detention order, which is already quashed and set aside by the Gujarat High Court, we are of the firm view that the subjective satisfaction of the detaining authority is vitiated and, as a consequence, the detention order passed on such perfunctory satisfaction cannot be sustained.

Rule is thus made absolute, by quashing and setting aside the detention order dated 05/04/2024.

Detenu-Manoj @ Manu @ Mano @ Mano Langdo shall be set at liberty forthwith.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)