

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4674 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHIMA DHARMA

Versus

DISTRICT MAGISTRATE

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KC SHAH, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu- Khima Dharma has brought under challenge the detention order dated 11/4/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner himself is head strong person and has been carrying on anti-social activities by himself and with the aid of his associates, of robbing, beating and threatening the pilgrims going to Ambaji by walking. Following offences under the provisions of the Indian Penal Code have been registered in the Ambaji and Amirgadh Police Stations against him :-

- 1) CR 102/88 U/Ss.324, 323, 504 & 114 of the IPC,
Pending trial.
- 2) CR 74/89 U/S. 394 of the I.P.C.
Pending trial.
- 3) CR 207/89 U/S. 394 & 34 of the IPC r/w. sec. 135
of the Bombay Police Act
Pending trial.
- 4) CR 46/90 U/Ss.323, 504, 114 of the IPB and sec.
135 of the BP Act
Pending trial.
- 5) CR 85/91 U/Ss. 326, 323, 114 of the IPC and sec.
135 of the BP Act
Pending trial.
- 6) CR 43/92 U/Ss.395 & 397 of the IP and sec. 135 of
the BP Act,
Pending trial.
- 7) CR 1/93 U/Ss. 323, 504 & 114 of the IPC and sec.
135 of the BP Act,
Pending trial.
- 8) CR 5/93 U/Ss. 323, 324, 504 & 114 of the IPC and
sec. 135 of the BP Act,
Pending trial.
- 9) CR 164/93 U/Ss.323, 504 & 114 of the IPC r/wad with
sec. 135 of the BP Act,
Pending trial.
- 10) CR 23/94 U/Ss. 394, & 34 of the IPC and sec.
135 of the BP Act,
Pending trial.
- 11) CR 38/94 U/Ss. 395 & 397 of the IPC,

Pending trial.

12) CR 36/95 U/Ss. 323, 324, 325 & 114 of the IPC
4/4/1995 read with sec. 135 of the BP Act,

Pending trial.

All the aforesaid offences relate to mainly robbing, beating and threatening the pilgrims going to Ambaji by walking, the last of which is stated to have been committed on or around 4/4/1995, that is to say around 12 months before the date of impugned order of detention.

3. Over and above these cases under the provisions of the Indian Penal Code and Bombay Police Act it has been recited in the grounds that confidential statements have been given by some witnesses alleging that the petitioner has been carrying on illegal and anti-social activity of robbing, beating and threatening the pilgrims going to Ambaji and also creating an atmosphere of fear.

4. I have heard the learned advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter-alia on the ground of delay as stated above.

5. Although there is no affidavit in reply to the aforesaid ground of delay, it has been submitted by Mr. K.C. Shah, Ld. AGP that the delay would stand explained by the fact that the witnesses have given their statements regarding the petitioner's activity. However, although the grounds do not indicate the particulars of such statements, it has to be borne in mind that the last reported case is of 4/4/1995. Even on scrutiny of statements Mr. Shah fairly concedes that the statements are also of February 1995 and earlier period. In that view of the matter all the cases including the statements of witnesses are quite old. Almost more than 12 months after the last of the said cases and last of the statements of the witnesses the impugned order of detention has been passed by the detaining authority. It can therefore, hardly be said that the delay has been explained by the detaining authority. In the context of such facts reliance has been placed on the decision of the Hon'ble Supreme Court in the case of P.N. Paturkar v/s. S. Rama Murti, reported in AIR 1994 SC 656. There the reference was made to an earlier decision of the Apex Court in the case of A.T. Abul Rahman v. State of Kerala, (1989) 4 SCC 741 : AIR 1990 SC 225). Following observations have been quoted :-

"The question whether the prejudicial activities

of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N. Paturkar's case (supra) would be applicable to the facts of the present case.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N. Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Khima Dharma shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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