

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 5423 of 1996
For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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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?
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GANPATBHAI AMRUTBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

MR SUNIL C PATEL for Petitioner

SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

Heard learned advocate Mr. Anil S. Dava for Mr. Sunil C. Patel, for the petitioner and Mr. Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed against the detention order dated 25th April 1996, passed by the Police Commissioner, Ahmedabad City, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985.

The detention order dated 23rd April 1996 was executed on 26th April 1996 and since then the petitioner is under detention lodged at Bhuj Sub-Jail, Bhuj.

The present Special Civil Application was filed in this Court on 23rd July 1996 and on 24th July 1996,

rule returnable on 19th August 1996 was issued. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that the petitioner is a luna-moped lifter and as many as 17 criminal cases of theft of luna-moped under Section 379 of the Indian Penal Code have been registered against the petitioners during the period from 1993 to 1996. Apart from the allegations contained in these 17 criminal cases, statements of witnesses with regard to the incidents on 24th March 1996 and 31st March 1996 pursuant to demand of a sum of Rs.250/- from the first witness and purchase of articles worth Rs.800/- without paying the price for it, have also been taken into consideration by the detaining authority. The witnesses have also stated with regard to their public beating by the petitioner. Statements with regard to these two incidents have been supported by other witnesses also and the witnesses have also requested that their identity be kept secret because they are afraid of the petitioner and, accordingly, privilege under Section 9(2) of the PASA has been claimed. The detaining authority has come to the conclusion that the petitioner is a dangerous person and was carrying on his anti-social activities in Navrangpura area in the vicinity of the University. Accordingly, the detention order has been passed to prevent the petitioner from continuing his anti-social activities.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that, even if the allegations levelled against the petitioners are taken to be true, they do not constitute a case of breach of public order, and at the most it would constitute a case of breach of law and order. The learned advocate for the petitioner has placed strong reliance on the decision of the Division Bench of this Court, rendered on 3rd March 1993, in Special Civil Application No. 1681 of 1992, wherein as many as 19 criminal cases were registered against that petitioner for various offences under the Indian Penal Code including Section 379 of the Indian Penal Code with regard to TV. Gas Cylinders, etc., and the Division Bench, relying upon the decision of the Supreme Court in the case of Harpreet Kaur vs. State of Maharashtra, reported in AIR 1992 SC 979, held that such allegations do not constitute a case of breach of public order. The principle enunciated by the Division Bench in the aforesaid case applies with full force on the facts of

the present case and, therefore, I am inclined to hold that the allegations and the material on the basis of which the detention order has been passed against the petitioner do not constitute a case of breach of public order so as to warrant the passing of an order of detention. Hence, the order of detention cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned order dated 25th April 1996, passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner forthwith and set him at liberty if not required in any other cases. Rule is made absolute.

(swamy)****