

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8631 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

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? No

5. Whether it is to be circulated to the Civil Judge?  
- No -

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ELESH NANDUBHAI PATEL

Versus

CP SINGH

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Appearance:

MR ND NANAVATI, WITH MR YN OZA WITH

MR VH DESAI for Petitioner

MR SN SHELAT, ADDL. ADV. GEN. WITH MR MAULIN RAVAL,

AGP WITH MR UA TRIVEDI, for Respondent No. 1 - 2

MR SH SANJANWALA WITH MR RS SANJANWALA for Respondent No. 3

MR TUSHAR MEHTA for Respondent No. 4  
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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 27/12/96

JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution, the petitioner has challenged the order of detention dated 05/11/1996. The subjective satisfaction of the Police Commissioner, Ahmedabad, who directed the detention, is based upon two

criminal adventures of the petitioner dated March 10, 1995 and May 20, 1995, and two unregistered incidents of 2/10/1996 and 10/10/1996.

2. The petitioner detainee claims to be a reputed business man carrying on the business of building constructions in the city of Ahmedabad. The petitioner says that he is a strong party worker of Bharatiya Janata Party and a very strong supporter of Shri Keshubhai Patel, a former Chief Minister of Gujarat State. He further says that the day Shri Keshubhai Patel became the Chief Minister, the petitioner was pinching like a throne in the body of respondent No.3 viz. Shri Shankersinh Vaghela, now the Chief Minister of Gujarat. Immediately after the respondent No.3 was sworn as the Chief Minister of State of Gujarat on October 23, 1996, the machinery of the State Government has been in motion to harass the petitioner. The impugned order of detention was passed by respondent No.1 at the instance of respondent No.3 and 4 malafidely. The petitioner has also made allegations of malafide against the respondent No.4 Shri Atmaram Patel, Minister for Revenue in the State of Gujarat. It is asserted that, after the respondent No.3 became the Chief Minister, he has shown his colour of power by moving the machinery to frame a case against the petitioner.

3. The petitioner has challenged the impugned order of detention on various grounds, including the ground of malafides. I would like to first deal with the ground of malafides.

Shri Shankersinh Vaghela, in his affidavit dated November 08, 1996, has denied the allegation that the order of detention has been passed by the respondent No.1 Shri C.P.Singh under his instructions. He has also denied that there is frustration in his mind, as alleged by the petitioner. After the amendment of the petition, second affidavit dated December 23, 1996 has been filed by Shri Shankersinh Vaghela. He has denied that, having come to power, he has shown colour of power by moving the machinery to frame a case against the petitioner. It is also stated that the allegations made against him in the petition are mere bare assertion, not supported by any material whatsoever and are incapable of being accepted. It is also stated that it is a mere co-incident of the order of detention having been passed against the detainee after October 23, 1996, which has been over played by the detainee for challenging the order of detention on the ground of malafide.

Similarly, Shri Atmaram Patel, respondent No.4 has also denied to have given any instruction to anybody including the respondent No.1 for detaining the petitioner. He has further submitted that he has been wrongly joined as a party to the petition only with a view to give political colour to his detention and such an attempt on part of the petitioner to malign the public orders of the State deserves to be condemned. He has asserted that he has not played any role in the subjective satisfaction arrived at by the detaining authority.

4. The respondent No.1 - Shri C.P.Singh, Commissioner of Police, Ahmedabad city, in his affidavit dated November 08, 1996, has categorically stated that neither the respondent No.3 nor respondent No.4 has exercised any influence on him, while passing the impugned order of detention. In his second affidavit dated December 21, 1996 filed after the amendment of the petition, he has stated that the order of detention has been passed by him after considering the gravity of the prejudicial activities carried by the petitioner and it is not passed at the instance of the third respondent or anybody else. He has also denied that the order of detention has been passed to harass the petitioner.

5. It is well settled position of law that the burden of establishing malafide is very heavy on the person who alleges it. The allegation of malafides are often very easily made than proved and the very seriousness of such allegations demand proof of a high order of credibility. In the present case, except bare statements of the petitioner, there is no material worth the name to say that the impugned order of detention has been passed at the instance of respondent No.3 and No.4. The allegations have been denied on oath by the respondent No.3 Shri Shankersinh Vaghela as well as respondent No.4 Shri Atmaram Patel.

6. Considering the affidavits, I have no reason to disbelieve the statements made by the respondent No.1, No.3 and No.4 on oath, more particularly when there is no material placed on record by the petitioner to substantiate the allegations. In view of this, the challenge of the order of detention on the ground of malafides fails and is accordingly, rejected.

7. On the facts of the case, the petitioner states that he has been falsely implicated in the complaint lodged at Kagadapith police station Cr.R. No.113/96 and at Naranpura police station Cr.R. No. 319/96. The name

of the petitioner has been inserted for the sole reason that he belongs to 'Hajuriya Fraction' in Bharatiya Janata Party. He has further stated that, in both the cases, the Court has granted anticipatory bail to him. which is prima facie sufficient to conclude that the petitioner is not a hardened criminal. With respect to the alleged incidents of 02/10/1996 and 21/10/1996, the petitioner states that they are false and fabricated. He further submits that, if there was any truth in the said allegations, the State could move for the cancellation of bail, but it was not done which clearly indicates that there is no existence of such cases.

8. Mr N.D.Nanavati, Sr. Advocate submits that, on this material, the petitioner cannot be branded as the 'dangerous person' as defined under section 2(c) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA ACT, 1985'). He submits that there is no material or any past history or his antecedents that the petitioner is habitually engaged in anti social activities which may be said to be prejudicial to the maintenance of public order. He further submits that the incident of March and May 1996 is a stale and relates to an individual incident and has no relevancy or any connection with the maintenance of public order. He submitted that it may amount to a stray and individual incident relating to law and order. He also submitted that the unregistered cases of October 1996 have been inserted only with a view to cover up the gap. Thus, according to Mr N.D.Nanavadi, Sr. Advocate, there is no material to indicate that the petitioner detinue was a 'dangerous person' habitually committing or attempting to commit or abetting the commission of any of the offences punishable under Chapter XVI or XVII of the I.P.C. or under Chapter V of the Arms Act and thus, the impugned order of detention could not be legally sustained. Making good the contentions, learned counsel has placed reliance on the decision of the Supreme Court rendered in the case of Mustak Miya Shaikh vs. M.M.Mehta, Commissioner of Police reported in 1995 (3) SCC 237 and Piyush Kantilal vs. State of Bihar reported in AIR 1989 SC 491.

9. On the other hand, Shri S.N.Shelat, learned Additional Advocate General, has read before me the contents of the FIRs and the Statements of the witnesses to satisfy this Court that the subjective satisfaction arrived at by the detaining authority calls for no interference by this Court. Relying on a decision of this Court in case of Harish Anand v. Union of India and others reported in 1996 (1) GLH 234, Mr Shelat submits

that, thus, in exercise of powers under Article 226 of the Constitution of India, in the matter of detention, the Court will not assume the jurisdiction to enquire into the facts and will also not import the Rule of Criminal Jurisprudence that the guilt of the accused must be proved beyond reasonable doubt. The High Court, under Article 226 of the Constitution, has to see whether the formalities enjoined by Article 22(5) have been complied with by the detaining authority. If the formalities have been complied with, the Court cannot examine the materials before it and find that the detaining authority should not have been satisfied on the material before it and detained the detainee under the PASA Act, 1985

10. Mr S.N.Shelat, relying on the decision of the Apex Court rendered in case of Harpreet Kaur v. State of Maharashtra reported in AIR 1992 SC 979, submits that the objectionable activities of the detainee must be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. Learned counsel has also placed reliance on the decision of the Supreme Court rendered in case of Rajendrakumar v. State of Gujarat reported in AIR 1988 SC 1255.

11. In Piyush Kantilal's case (supra), the apex Court found that the activities of the detainee as a bootlegger, were of general and vague nature and those activities did not affect the maintenance of public order under section 3(4) of the PASA Act, 1985. On the facts of the case, it was found that the alleged activities of the detainee did not affect the public order, but created only law and order problem.

12. Recently, this Court (Coram : K.J.Vaidya, J.) in case of Kantibhai Bhikhabhai Bhil v. K.P.Kaushik, Police Commissioner reported in 1995 (2) GCD 727 (Guj), considering the case of Piyush Kantilal (supra) and Mustak Miya Shaikh (supra), and Harpreet Kaur (supra), held that the illegal activities of the detainee are required to be examined in totality and such activities cannot be just toned down to mere breach of law and order, as it has indeed to immediate reach and wider impact upon the public order.

13. In case of M. Mohammed Sulthan v. The Joint Secretary to Government of India, Finance Department reported in AIR 1990 SC 2222, in para-7, the Apex Court dealing with the case of single incident, whether that could not afford the basis of arriving at the satisfaction that the petitioner might repeat such acts

in future and it was necessary to detain him in order to prevent him from doing so, the Court observed thus,

"An order of preventive detention is founded on a reasonable prognosis of the future behavior of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or of a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts as to warrant his detention.

The question which, therefore, needs to be considered is whether from the conduct of the petitioner as set out in the grounds of detention, it could reasonably be inferred that the petitioner is a person who has a tendency to disturb the public order.

C.R. NO. 113/95 : KAGADAPITH POLICE STATION :

14. It is alleged in the FIR that, on March 10, 1996, Bharatiya Janata Party had organized the Baxipanch Maha Sammelan at Kankariya football ground. The function started at about 03.00 hrs at noon. At about 3.45 hrs, Shri kashiram Rana of Bharatiya Janata Party stood up for addressing the public. From the crowd of the people gathered, the so-called workers of the B.J.P. from Naranpura area - Patel Eleshkumar Nandubhai as well as his companions stood up and started shouting loudly that "Khajuriya, sit down" and they also continued shouting very loudly. They were advised to sit down, on which they started quarrelling and at that time, Elesh Patel took out the Gupti from his pant and he made an attempt to pierce the same in the stomach of one of the workers Ajaybhai. This incident created a riot in the meeting. It is also stated in the FIR that Amit Shah, who is the main leader of the B.J.P. and Elesh Patel have also played great mischief during the earlier public meeting held by Shri Adavani in Naranpura, Sola Road, and on that day, they altogether came to create disturbances in the meeting by forming an unlawful assembly, played mischief, created riots and attempted to commit murder of the workers of the Party.

In support of the FIR, the statements of some of the witnesses have been recorded. I have gone through those statements and it is not necessary to repeat whatsoever stated therein.

C.R. NO. 320/96 : NARANPURA POLICE STATION :

15. On May 20, 1996, a public meeting was arranged at Sardar Patel Stadium on the eve of visit of Shri Atal Bihari Vajpeyee, then Prime Minister of India to Ahmedabad city. It is alleged that the petitioner detinue and his companions formed an illegal assembly, cordoned the leaders and workers of B.J.P. viz. Shri Shankersinh Vaghela Group, by way of beating them and causing injuries to them and causing damages as well as giving threats to kill them. All that created a commotion and riot, disturbing the public order.

16. One witness Kanubhai has said that, on arrival of Shri Vajpeyee, the meeting commenced and the speech was given by Shri Kashiram Rana, there was shoutings that, "Khajuriyas, sit down" and when Narendrasinh, Ashokbhai and Keshubhai were addressing the people, these people were encouraging them by way of clapping. In addition, when Vajpeyeeji stood up to deliver the speech, he heard somebody shouting as "National Khajuriyo". Therefore, they thought it better to come out before the speech of Shri Vajpeyee was over. When he reached to his N.E. Car, the meeting was over and at the VIP gate, he found people assembling in crowds and making the noise that "Beat the Khajuriyas". At that time, he witnessed the mob of about 20 to 25 boys breaking the glasses of the contesa cars in the VIP parking. He saw Dattaji running on the road and behind him, there was Elesh Patel running. He has further stated that Elesh Patel was saying that "The person who is running is Dattaji and he is Khajuriyo, beat him, kill him". At that time, Dattaji got in a red bus which was standing there and Elesh Patel has instigated the crowd which was standing there and thrown stones and they were shouting that the bus may be put to fire. Shri Dattaji has also supported the statements on the same line.

17. Shri Atmaram Patel, aged about 78 years, in his statement, has stated that, on May 20, 1996, he attended the meeting of the Prime Minister Shri Atal Bihari Vajpeyee. He took his seat in the separate sector which was kept specially for Ministers and Member of Parliaments and M.L.As. The meeting was over at about 10.00 hrs. When he, alongwith Kantibhai Solanki, was coming out of the sector, about 500 people had assembled there and they were saying that why he had done the work to defeat the B.J.P. and they had started pushing each other. The security Guard Arjunsinh Rathod who was with him also tried to save him, but he was beaten and his clothes were torn. The crowd dragged his "Dhoti". As per his information, the crowd included Elesh Patel.

18. It is not necessary to state the facts with respect to the unregistered cases of 2nd and 10th October 1996. From the narration of facts of both the FIRs and the statements of the witnesses, it reveals that the petitioner is a man with a tendency or inclination to disturb the public meetings of his political opponents, for which he does not hesitate even to take violence which includes using arms, throwing stones, attempt to burning buses etc. which disturbs the public order. I am clear in my mind that the second incident took place after the meeting was over and it was not a meeting of his political opponent.

19. Thus, in my view, the facts of the case are of such a nature wherein reasonable inference must be drawn that the petitioner has a tendency which is likely to repeat such acts disturbing the public order. The subjective satisfaction of the detaining authority calls for no interference.

20. Though I have found the conduct of the petitioner of serious nature, but at the same time, in my view, having regard to the long gap between the occurrence and the order of detention, the continued detention of the petitioner is not desirable. Thus, on the facts of the case, I would prefer to adopt the course adopted by the Supreme Court in case of Jagan Nath Biswas v. The State of West Bengal reported in AIR 1975 SC 1516. It is true that ipso facto in passing the order of detention after an incident is not fatal to the detention of a person, for, in certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenue was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is ofcourse true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention



not proximate, vitiating the order of detention itself. If I am to buttress my findings. I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth vs. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61.

22. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention is quashed and set aside. The petitioner detenue shall be released forthwith, if he is not required in any other case.

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23. Mr S.N.Shelat, learned Additional Advocate General, submits that effect and implementation of the order directing the petitioner to be released forthwith be stayed for a period of one week.

24. As I have held that the impugned order is illegal, there is no justification to stay the same. The prayer is accordingly declined.

[ N.N.MATHUR, J. ]

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