

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2007 of 1997

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?

TAKLO @ DHARMESH HIMMATLAL KHATRI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
Mr.LR POOJARI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/03/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 5th November 1996 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), for short "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to this petition. They inter alia indicate that the petitioner has been indulging in criminal and anti-social activities of committing thefts, house breaking and extorting money resulting in fear in the mind of people about the security of their properties. The Detaining Authority has placed reliance upon four offences, three of 1995 and one of 1996 registered in Amreli City Police Station, inter alia under Section 379 & 380 of the Indian Penal Code. The particulars of such offences have been set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied upon. They speak about the incidents of September and October, 1996 indicating beating in public the concerned witnesses and creating atmosphere of fear amongst the people collected at the time of such incidents.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a dangerous person within the meaning of section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground of the genuiness of the claim of privilege made by the Detaining Authority under Section 9(2) of the PASA Act vis-a-vis the statements of witnesses. Mr. H. R. Prajapati, learned Advocate for the petitioner has submitted that in fact the witnesses in their statements have said that their addresses, names, place of business, etc. should not be disclosed to the detenu as they were apprehending danger to their life and property. Such apprehension or fear expressed by the witnesses in their statements was before the authority, who has recorded the statements. The detaining authority has not recorded the statements. The detaining authority itself was required to be subjectively satisfied that the claim of privilege which it was seeking to make was justified. Therefore, it has directed the S.D.P.O. to satisfy whether the fear or apprehension expressed by the witnesses was genuine or not and the S.D.P.O. has, unfortunately, written one word, viz. "verified" and based on such endorsement the

detaining authority has claimed privilege. It is submitted before this Court that such an exercise is merely an eye wash and there is no genuine independent material before the detaining authority to claim the privilege. In this connection reliance is first placed upon the decision of the Division Bench of this Court in the case of Koli Ashwin V/s. State of Gujarat & ors., in Special Criminal Application No. 1812 of 1993, decided on 12.9.1994. The said decision has been relied upon by a learned Single Judge of this Court in Jakirbhai Rahimbhai Nagori V/s. District Magistrate, Mehsana & ors., reported in 1996 (1) G.L.H. 300. In my view both these decisions would apply to the facts of the present case in so far as they relate to the claim of privilege u/s. 9(2) of the PASA Act.

6. In above view of the matter this petition is required to be allowed. The continued detention of the detenu herein is, therefore, declared as illegal. Following order is, therefore, passed :

7. Continued detention of the petitioner is hereby put an end to. The petitioner-detenu Taklo @ Dharmesh Himmatal Khatri 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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