

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 165 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
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

GANESH SUKHILAL PATIL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
Mr. M.A. Patel, A.P.P. for the respondents.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/08/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Anil S. Dave with
Ms. Subhadra G. Patel, on behalf of the petitioner
and learned A.P.P. Mr. M.A. Patel for the respondents.

The petitioner-detenu has approached to this
Court under Article 226 of the Constitution of India to
claim a writ of habeas corpus and/or any appropriate writ
or direction to quash and set aside the detention order

dated 8-9-1998 passed by the respondent no.2-Commissioner of Police, Surat against the petitioner in exercise of powers conferred by Section 3(1) of the Gujrat Prevention of Antisocial Activities Act, 1985(hereinafter referred to as the "PASA".)

2. That vide impugned order dated 8-9-1998, the respondent no.2 has held that the petitioner-detenu-Ganesh Sukhlal Patil is a dangerous person within the meaning of Sec.2(c) of "PASA" and in order to prevent his criminal and antisocial activities adversely affecting the maintenance of public order, it is necessary to detain him under the Act, and as such, the petitioner is ordered to be detained and kept at Central Jail, Sabarmati, Ahmedabad and to treat him as Class II prisoner.

3. The petitioner was served the grounds of detention dated 8-9-1998. The said grounds inter alia state that during the year 1997 and 1998 three offences as detailed hereinunder were registered against the petitioner.

(A) CR no.58/97 registered at Limbhayat Police Station for the offences made punishable under Ss. 323, 324, 504 read with S.114 of the Indian Penal Code and Sec.135(1) of the Bombay Police Act.

The incident is alleged to have occurred on 17-3-1997 and the petitioner was arrested on 2nd August,1997. That the said incident is alleged to have taken place at Bilianagar, Behind Punam Cinema, Navagam, Dindoli Road, Limbhayat, District Surat. The weapon recovered from the petitioner is a knife. That the proceedings of said case is pending trial in Court.

(B) CR no.54/98 registered at Limbnhayat Police Station for the offences made punishable under Secs.323, 504, 324 read with Sec.114 of the Indian Penal Code and Sec.135(1) of the Bombay Police Act.

The incident is alleged to have occurred on 10-3-1998 at a place near Lalita Medical Store and Mamta Talkies, Shankarnagar, Limbhayat and the petitioner was arrested on 17-5-1998. The weapons recovered from the petitioner and his accomplice are a knife and a sword. The proceedings in respect to said cases are also pending for trial in Court.

(C) CR no.144/98 registered at Limbhayat
Police Station in respect to offences
made punishable under Ss.324.

The incident is alleged to have occurred on
12-7-1998 at the place near the factory of Pankajbhai,
Shankernagar, Limbhayat, and the petitioner was arrested
on 16-7-1998. The weapon alleged to have been recovered
from the petitioner is a knife. The proceedings in
respect to said case is pending trial in Court.

4. So far as the first incident of offence is
concerned, it is stated in the grounds of detention that
the complainant- Rameshwar Namdev Lokhandey was passing
through a road behind Poonam Theatre at about 10.15 p.m.
on 17-3-1997. The petitioner in the company of his
accomplice (i) Lalo alias Kishore Rajaram Nagaraley, (ii)
Babbu alias Santosh Amarpalsingh Thakur and (3) Anil
alias Anil Chor Shantaram Jarad picked up quarrel with
the complainant and mounted assault on complainant with a
sword-like knife and have also beaten the complainant
with kicks and fist blows.

So far as the second incident is concerned, it is
stated in the grounds of detention that on 10-3-1998 at
around 12.15 noon when the complainant-Brindesh Raghunath
Nayak was near his residence, the petitioner alongwith
his accomplice Baburao alias Shantaram Sindhe alias Zarad
and Jayesh Siddhu alias Sidiya Rana demanded the amount
of instalment. On refusal by the complainant, the
petitioner and his accomplice mounted assault with a
sword and caused grievous hurt on the right hand of the
complainant and also caused injury to witness Karthik
Laxman, Subhash Dandpani Thapa as well as Kaviraj Padam.

As regards third incident of 12-7-1998, when
complainant Santosh Satyanarayan Oza was at the place
near factory of Pankajbhai, the petitioner came there and
demanded Rs.30/- to consume liquor. That on refusal by
the complainant, the petitioner abused him and assaulted
with a knife. That the complainant sustained injuries on
both the legs.

5. It is further stated in the grounds of detention
that over and above the aforesaid registered offences,
two witnesses on assurance of anonymity have furnished
information about the criminal and antisocial activities
of the petitioner which have been verified by the
detaining authority. That accordingly on 7-7-1998 at

around 7.00 p.m. the witness was passing on the road of Surat City. At that time, the petitioner in the company of his three accomplice came there and stopped this witness telling him that he has been acting as a police informant and giving information about the petitioner. That the witness was beaten by fist blows and kicks. On the witness having raised alarm, people gathered there and thereby at the instance of the petitioner his accomplice rushed there with deadly weapons like knife sword etc. and as such, persons who gathered there started running helter-skelter. The residents of the locality went into their house and closed the doors while shopkeepers closed the shutters of their shop. Such activities of the petitioner and his accomplice have created an atmosphere of fear and terror in the vicinity. That the witness having prayed for pardon, the petitioner had permitted the witness to go but before that he had snatched away Rs.240/- from the pocket of the witness. The petitioner also threatened the witnesses of dire consequences if complaint is filed against the petitioner.

That other witness has stated to the authority that on 3-6-1998 when he was passing through the road of Surat City, the petitioner in the company of his two accomplice stopped the witness and demanded Rs.500/-. On refusal by the witness, the petitioner and his accomplice mounted an assault and have beaten the witness with fist blows and kicks. On the witness raising alarm, the persons residing in the locality gathered there and at the instance of the petitioner, his accomplice armed with sword, knife etc. rushed towards the people gathered there and as such the people started running helter-skelter. That the residents of the locality closed their house while shopkeepers had their shutters down. That such activities of the petitioner and his accomplice created an atmosphere of insecurity, fear and terror amongst the members of the locality. The petitioner had permitted the witness to go on his assurance to make payment and at that time the petitioner also threatened the witness of dire consequences if any complaint is filed against the petitioner.

6. On the basis of the above said three registered cases and two unregistered incidents for which witnesses have given information about the criminal activities of the petitioner, the respondent no.2 has held that the provisions of general law are insufficient to prevent the nefarious activities carried out by the petitioner which is affecting adversely to the maintenance of public order. That the petitioner has been released in respect

to the first two incidents of offences registered as stated hereinabove. However, though he is in judicial custody in connection with the third offence stated hereinabove, but he is likely to get released on bail and continue his antisocial activities thereafter. That Chapter case has also been registered against the petitioner on 6-8-1998 bearing no.345/98 at Limbhayat Police Station under Sec.107 of the Code of Criminal Procedure. However, on completion of said proceedings under the bond of good behaviour the petitioner would be released and the petitioner cannot be prevented from resorting to criminal and antisocial activities. That proceedings under Sec.110 of the Criminal Procedure Code as well as under Sec.56 of the Bombay Police Act are likely to consume time and as such, the respondent no.2 has come to the conclusion that on the above stated facts powers conferred by "PASA" under Sec.3(1) of the Act is required to be exercised to detain the petitioner and hence, the impugned order is passed.

7. Learned Advocate Mr. Anil S. Dave has assailed the impugned order contending that the impugned order is not sustainable at law because same is passed without application of mind. It is also contended that material produced before the detaining authority cannot be said to be sufficient to form a subjective satisfaction for detention of the petitioner under the provisions of "PASA". Relying on the observations made by the Supreme Court in the matter of MUSTAKMIYA JABBARMIYA SHAIKH V. M.M. MEHTA, C.P. reported in 1995(2) G.L.R p.1268, Mr. Dave has submitted that looking to the alleged criminal activity of the petitioner, the petitioner cannot be said to be an habitual offender as there is no continuity of criminal activity apparent from the material produced on record. That the first incident registered against the petitioner is of 17-3-1997 while the subsequent incidents are dated 10-3-1998 and 12-7-1998 respectively. It is urged on behalf of the petitioner that for want of continuous and persistent offences, the petitioner cannot be classified as a "dangerous person" within the meaning of Sec.2(c) of "PASA". That the respondent no.2 has erred in coming to the conclusion that the petitioner is a "dangerous person" within the meaning of Sec.2(c) of "PASA", and as such, the impugned order is bad in law. It is also submitted that alleged criminal activity of the petitioner as demonstrated from the material produced on record are in respect to offences affecting

individuals and at the most could be said to be problems disturbing law and order and could hardly be said to be of such gravity and magnitude which could disturb the

even tempo of life in the community as held in MUSTAKMIYA's case (supra). That on account of the same, the impugned order of detention passed by the respondent no.2 cannot be sustained at law, and hence, deserves to be quashed and set aside.

8. Learned A.P.P. Mr. M.A. Patel has made an abortive attempt to show that incidents registered at serial no. (B) and (C) in respect to offences stated hereinabove and instances ascertained from two witnesses are proximate in time. Not only that but modus operandi of the petitioner suggests that petitioner is a gang leader and that his accomplice have been extorting money from the members of the public by using force and creating an atmosphere of terror. That thereby the respondent no.2 is justified in holding that the petitioner is a dangerous person and his activities could not be prevented by application of general law, and hence, order of detention is the only available remedy which is just proper and reasonable. Learned A.P.P. Mr. M.A. Patel has invited my attention to the observations made by the apex Court in the matter of AMANULLA KHAN KUDEATALLA KHAN PATHAN V. STATE OF GUJARAT reported in JT 1999 (4) SC 455 in support of his submissions.

9. It cannot be disputed that even an activity violating an ordinary legal provision may in a given case be a matter of "public order". It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order".

10. On appreciation of facts and circumstances from the material extracted hereinabove from the grounds of detention supplied to the petitioner, the activities of the petitioner could hardly be said to be of such magnitude and gravity which could reach the public at large so as to disturb the even tempo of life of the community or section of the society as held in AMANULLA KHAN's case (supra). Hence, I hold that, in the instant case, the impugned order passed by the respondent no.2 against the petitioner suffers from the infirmity of non application of mind and as such, is not sustainable at law.

11. On the basis of the foregoing discussion, the petition is allowed. The impugned order of detention dated 8-9-1998 passed by the respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner-detenu- Ganesh Sukhlal Patil is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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