

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3345 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
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? : NO

AARAB RAJAKBIN KARIMBIN @ MUSIBAT

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/11/1999

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar detained the petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act'] in exercise of powers u/s 3[1] of the PASA Act. The grounds of detention indicate that the detaining authority took into consideration the three offences registered against the petitioner. The detaining authority also considered the statements of

four witnesses in respect of unregistered offences. The authority was satisfied that the activities of the detainee are detrimental to public order. The witness had expressed fear from the detainee and the detaining authority recorded a subjective satisfaction that the incidents narrated by the witnesses and the fear expressed by them was genuine and correct and therefore, exercised powers u/s 9[2] of the PASA Act and claimed privilege. The detaining authority considered other alternative less drastic remedy, but ultimately came to a conclusion that, in order to prevent the detainee from pursuing his illegal and anti social activities immediately, the detention under the PASA Act was the only remedy that can be resorted to.

2. The detainee has challenged the detention on various grounds in this petition. One of the grounds is that the copy of certain documents namely bail application in respect of Mahuva police station Cr.R. No. I - 209/98 was not supplied to the detaining authority and it was not supplied to the detainee also. This has caused prejudice to the detainee as his right of making an effective representation is put to jeopardy.

3. Mr. Shah has pressed into service only the ground stated above and urged that the petition deserves to be allowed on this ground alone.

4. Mr. Joshi, learned AGP appearing for the respondents conceded after verifying the file provided to him by an officer of the department present in the court and stated that the copy of the order passed in the bail application is supplied, but the copy of the bail application is not supplied. Mr. Joshi states that although the index of compilation supplied to the detainee indicates that copy of bail application is included in the documents, in fact copy of bail application is not to be found in the file of the department and as such, it lends support to the argument of the petitioner that he has not been supplied with the copy of the bail application.

5. It is clear therefore that the authority did not have the bail application before it while passing the order of detention. The detainee has also not been supplied with the copy of the bail application. This has resulted into denial of a constitutional right of making an effective representation. Non-supply of documents in such case would vitiate the order of detention and the petition therefore deserves to be allowed on this ground alone.

6. The petition is therefore allowed. The impugned order of detention passed by the District Magistrate, Bhavnagar on 4th of March 1999 in respect of the petitioner Aarab Rajakbin Karimbin alias Musibat, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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