

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4439 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 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

UDAY VISHVASRAO JADAV BROTHER OF DETENU PRATAP @ MAMO

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

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

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/11/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Vadodara city, Vadodara passed an order on 23rd February 1999 in exercise of powers u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short], detaining one Pratap alias Mamo Vishvasrao Jadav, resident of 1179, Vishalnagar, Tarsali, Vadodara under the provisions of the PASA Act. The grounds of detention indicate that the detaining

authority considered two offences registered against the petitioner. The authority also considered the statements of three witnesses regarding unregistered offences and recorded a subjective satisfaction that the activities of the detainee were causing disturbance to public order. The authority also considered that the detainee was externed by appropriate authority. That said externment order was challenged in appeal and the appeal came to be dismissed and the order attained finality. The authority considered that, while order of externment was in subsistence, the detainee committed a breach of the same and was booked therefor vide Makarpura police station Cr.R. No. 72/99 for offence punishable u/s 142 of the Bombay Police Act. The authority considered that the detainee is in custody, but is likely to apply for bail and get the bail and continue his illegal and anti social activities and therefore, detention under the PASA Act was the only remedy available to the detaining authority for immediately preventing the detainee from pursuing his illegal and anti social activities.

2. The petition is preferred by the brother of the detainee one Uday Vishvasrao Jadav challenging the order of detention of detainee Pratap alias Mamo. The petitioner has challenged the order of detention on various counts. One of the grounds is, that the detaining authority has not considered the alternative remedy while passing the order of detention and therefore, the subjective satisfaction of the detaining authority is vitiated.

3. Mr. Kapadia, learned advocate appearing for the petitioner, has restricted his arguments to the above ground only. While elaborating that ground, he submitted that, as can be seen from the grounds of detention, the detaining authority was aware that the detainee was in custody. It is also clear from the grounds of detention that, till then, no bail application was preferred by the detainee. The detaining authority was, therefore, unaware that unless and until an application is given for release on bail by the detainee, the possibility of his being released on bail is nonexistent. The authority therefore ought to have considered the possibility of opposing such bail application which is not considered. The subjective satisfaction, therefore, is vitiated. Mr. Kapadia, therefore, urged that the petition may be allowed and the order of detention be set aside. He has pressed into service the decision of the apex court in the case of Abdul Razak Abdul Wahab Shaikh v/s S.N. Sinha, Commissioner of Police, Ahmedabad city as reported in AIR 1989 SC 2265.

4. Mr. Joshi, learned AGP has opposed this petition vehemently. He submitted that if the grounds of detention are perused, it indicates that the detenue was a dangerous person. He has been booked in two offences punishable under Indian Penal Code and Bombay Prohibition Act. He is acting in a high handed manner causing fear in the minds of people at large. He was externed and he has flouted that order of externment. These factors collectively indicate that the detenue was habitually involved in illegal and anti social activities. The apprehension expressed by the detaining authority that the detenue, on being released on bail, would again indulge into such activities was, therefore, well founded and therefore, the ground that is claimed by the petitioner is not available for setting aside the order of detention. The petition may therefore be dismissed.

5. Considering the rival side contention, in light of the grounds of detention, it is clear that the detaining authority was aware of the fact that the detenue was in custody on being booked by Makarpura for committing breach of externment order. The detaining authority has stated that the detenue may apply for bail and may secure bail and thereafter, pursue his illegal and anti social activities disrupting public order.

6. The above observations indicate that the detenue was in custody and that till the order was passed, he had not applied for bail because the authority observed that the detenue may apply for bail, may furnish bail and get bailed out. In this regard, it appears that the detaining authority has overlooked the fact that the detaining authority had a less drastic alternative remedy in the nature of opposing the bail application and the authority therefore ought to have considered the possibility of resorting to this less drastic remedy, which indicates non-application of mind.

7. Another aspect that is reflected from the grounds of detention is, that the detaining authority has overlooked the fact that unless an application for bail is made, the possibility of the detenue being released on bail is nonexistent and then non-awareness of the detaining authority is held to be sufficient to vitiate the subjective satisfaction by the Apex Court in the case of Abdul Razak Abdul Wahab [supra] and the Apex Court observed in para 21 as under :-

"21. It appears that in the grounds of detention there is a statement that at present

you are in jail yet there are full possibilities that you may be released on bail in this offence also. This statement clearly shows that the detaining authority was completely unaware of the fact that no application for bail was made on behalf of detainee for his release before the designated court and as such, the possibility of his coming out on bail is nonexistent. This fact of non-awareness of the detaining authority, in our opinion clearly establishes that the subjective satisfaction was not arrived at by the detaining authority on consideration of relevant material." [Emphasis supplied]

8. In view of the above aspects, the order of detention would stand vitiated on account of non-application of mind by the detaining authority to the aspect of possibility of opposing bail and non-existence of the possibility of the detainee being released on bail, as the bail application was not even existent when the order came to be passed. In this regard, the affidavit in reply may also be considered. The detaining authority has considered, in affidavit in reply, the aspect of flouting of externment order and other activities of the detainee, but there is no reference to the aspect of consideration of possibility of opposing the bail.

9. In this view of the matter, the petition deserves to be allowed.

10. The petition is allowed. The impugned order of detention passed by the Commissioner of Police, Vadodara city, Vadodara, dated 23rd February 1999 in respect of detainee - Pratap alias Mamo Vishwasrao Jadav, is hereby quashed and set aside. The detainee - Pratap @ Mamo Vishwasrao Jadav, be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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