

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8126 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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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

GURU @ GURIYO BHIKHABHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

Ms.K.D. Parmar for Ms.MADHUBEN SHARMA for Petitioner
Ms.Hansaben Punani, ASSTT GOVERNMENT PLEADER for
Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/07/1999

ORAL JUDGEMENT :

Ms.Punani, the learned AGP has placed affidavit
in reply to the petition on the records of the matter.
The affidavit was sworn on 23rd March, 1999. However, it
has not been served upon the petitioner or his advocate
till the date. The affidavit is, therefore, not taken on
record.

2. The petitioner challenges the order of preventive

detention dated 17th August, 1998 made by the Commissioner of Police, Rajkot City under the powers conferred upon him under Subsection (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as "the Act").

3. It is alleged that the petitioner is a dangerous person within the meaning of Section 2 (c) of the Act and his activities are prejudicial to the maintenance of public order. As many as four offences punishable under Chapter XVII of the Indian Penal Code have been registered against him during the year 1998. In each of the said offences stolen articles and cash were recovered from him. Besides, two persons have given statements in respect of the incidents that occurred on 26th April, 1998 and 2nd May, 1998. It is alleged that on 2nd May, 1998 in the evening when the witness was going home, the petitioner and one of his associates called him and demanded a sum of Rs.600/-. On the witness's refusing to give the said amount he was dragged out of his tractor and was beaten with the spade handle and his shirt was also torn off. He was robbed of his cash worth Rs.110. He was threatened at a knife point not to make complaint to the Police. The incident attracted a crowd and the petitioner pursued the crowd with an open knife. On 26th April, 1998 at around 6.00 PM the petitioner and his three associates went to the shop of the witness and ordered certain food articles, cigarettes, etc. However, he refused to pay for the same. When the witness demanded money, the petitioner and his associates dragged him out of his shop and beat him. When the witness threatened them of filing a Police complaint, the petitioner took out a knife and exhorted him not to file Police complaint; lest he would be killed. The incident also attracted a crowd of people. The petitioner exhorted the people gathered of dire consequences and pursued them with an open knife. Both the incidents are alleged to have created terror and feeling of insecurity in the minds of the people. The people had to run away for their safety. The witnesses had, but for the assurance of anonymity, had refused to give statements against the petitioner. The aforesaid statements were recorded on 15th August, 1998. Both the statements have been verified personally by the Commissioner of Police, Rajkot City on 17th August, 1998. The detaining authority has recorded his personal satisfaction in respect of genuineness of the said statements and also of the fear expressed by the witnesses. He has, therefore, under the powers conferred under sec.9(2) of the Act, withheld the names and other particulars of the witnesses. In none of the offences registered against

the petitioner he was released on bail and was in judicial custody. However, the detaining authority has observed that there was a possibility of the petitioner making applications for release on bail and if such applications were made, the petitioner could have been released on bail. Unless the petitioner was detained under the Act he was likely to continue his nefarious activities.

4. It is contended that the detaining authority has not relied upon all the relevant materials and the materials on which the detaining authority has relied upon are not relevant. The contention being vague cannot be accepted. It is further contended that the orders releasing the petitioner on bail have not been supplied to the petitioner. As recorded hereinabove, the petitioner had not been released on bail. In absence of any application for bail having been made by the petitioner, the question of order made thereon would not arise. This contention is also baseless. It is further argued that the witnesses were not reliable and by claiming privilege under sec.9(2) of the Act, the detaining authority has deprived the petitioner of his right to make an effective representation. As observed hereinabove, the detaining authority has recorded his personal satisfaction in respect of genuineness of the statements made by the witnesses and the fear of retaliation expressed by them. Hence neither of the said witnesses can be said to unreliable nor the privilege exercised can be said to be unjustified.

5. It is next contended that in any view of the matter the activities of the petitioner at the most can be said to be a problem of law and order and cannot be detrimental to the maintenance of public order. It is true that individual case of theft would not be a problem of public order, but several such offences committed in quick succession in a specific locality/ town would certainly create a feeling of insecurity in the minds of the residents of the locality or town. Further, the incidents which occurred on 26th April, 1998 and 2nd May, 1998 also speak of the petitioner's nefarious activity which had the potentiality of disturbing the public tranquility and the even tempo of life. It, therefore, cannot be said that the petitioner's activities are not prejudicial to the maintenance of public order. No other contention is urged before me.

6. The petition is dismissed. Rule is discharged.

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