

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10839 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 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

SUNIL @ CHHOTU VINODBHAI PRUTHVISINH CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR AM PAREKH FOR MR CHETAN B RAVAL for Petitioner
MR UDAI R BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. Present petitioner has preferred this Spl. Civil Application under Article 226 of the Constitution of India to challenge the order of detention passed by the Police Commissioner, Ahmedabad City, on 24th April, 2000,

against the petitioner in pursuance of the power vested in him under Section 3(1) of the Prevention of Anti Social Activities Act, 1985 (PAST for short). The order came to be served against the petitioner on the same day.

2. Grounds placed on record for the detention reveals that the present petitioner is indulging in theft cases and specially in the theft of motor vehicles. The petitioner also keeps dangerous weapons in his custody. The detaining authority has mentioned in the ground that in all seven crimes were registered against the petitioner in Ahmedabad and Gandhinagar Police Stations for the offences under Section 394 and 379 of the Indian Penal Code and under Section 25(1)(B)(A) of the Arms Act. The detaining authority took into consideration the investigation in the above said 7 crimes. The detaining authority also took into consideration the statement of two independent witnesses who on assurance of anonymity offered statements before the detaining authority that the petitioner was a hardened criminal and head strong person and was obstruction to public order. Detaining authority further observed that there was no other alternative remedy available to the authority except to detain the petitioner under the PASA Act.

3. Learned Advocate Mr. A.M. Parekh for the petitioner and learned AGP Mr. Udai R. Bhatt, for the respondents were heard.

4. Petitioner has challenged the detention order on various grounds. One of the grounds is that the detaining authority has failed to consider the less drastic remedy available to the petitioner properly. From the rival contentions available on record, it emerges that the detaining authority attempted to consider less drastic remedy but the same appears to have been considered with non-application of mind. The detaining authority has observed that in Crime Register No. 3131 of 2000 registered against the petitioner at Naranpura Police Station under the Arms Act at the time of serving of the detention order, the petitioner was in judicial custody. In other crime registered against the petitioner, he was on bail. The object of the PASA Act is to detain a person who is obstruction to public order, behind the bar for a temporary period so as to prevent his illegal activities. It appears that at the time of passing of the order, the petitioner was already in judicial custody in Crime Register No. 3131 of 2000 and there was no likelihood of his continuing the illegal activities. However, the detaining authority failed to consider this aspect. Moreover, the detaining authority

failed to consider the intent and import of the provisions of Sec. 437(5) of the Cr.P.C., which empowers the concerned authorities to apply for cancellation of bail. Without resorting to such remedy available to the detaining authority, merely observing that the procedure under Sec.437(5) was likely to take time, is nothing but total non-application of mind by detaining authority qua facts of the case. The detention impugned therefore is vitiated by non-application of mind by the detaining authority and the same is required to be quashed and set aside.

5. In view of the above discussion, this petition is allowed. The detention order dated 24th April, 2000 passed by detaining authority i.e. Police Commissioner, Ahmedabad City, against the petitioner is hereby ordered to be quashed and set aside. Petitioner - Sunil @ Chhotu Vinodbhai Pruthvisinh Chauhan, is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair