

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1245 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
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

BALDEVJI @ RAJU KUNVARJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1245 of 2002
MS BANNA DATTA FOR MS SADHANA SAGAR for Petitioner No. 1
MR SAMIR DAVE AGP for Respondents
-

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 29/10/2001 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the six offences registered against the detenu under Sections 379 and 114 of Indian Penal Code. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in judicial custody, and this aspect would have been considered by the detaining authority while passing the detention order. In support of her arguments, the learned counsel for the petitioner has drawn my attention towards the grounds of detention in which the detaining authority has stated that on the date of passing detention order, the petitioner was in judicial custody. In this connection, he has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

"Preventive Detention--Detention order-Subjective

satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in judicial custody, hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 29/10/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Baldevji alias Raju Kunvarji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik