

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1367 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANUJI @ MANU DARBAR PRATAPJI PARMAR

Versus

STATE OF GUJARAT, TO BE SERVED UPON THE HOME SECRETARY,

Appearance:

1. Special Civil Application No. 1367 of 2003
MRS MADHUBEN SHARMA for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

In this petition under Article 226 of the
Constitution of India, the petitioner-detenu has
challenged the legality and validity of the detention

order passed by the Police Commissioner, Surat City dated 14th August, 2002 in exercise of powers vested under him by Sub-Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') branding the petitioner-detenu as dangerous person within the meaning of Section 2(c) of the PASA Act.

2. While recording the subjective satisfaction, the detaining authority has mainly placed reliance on the fact that the petitioner is involved in three different criminal offences registered with Umara police station. The table of cases supplied to the detenu along with the grounds of detention indicates that these offences are punishable under Section 379 and 114 of IPC. In all the three offences, as per the detaining authority, the petitioner was found involved in lifting of motor cycles parked in a public place in year 2002. It is argued that the order passed by the detaining authority suffers from number of infirmities. However, the learned counsel has concentrated his argument mainly on one point and it is submitted that the petitioner has been wrongly branded as dangerous person and the alleged activity of the petitioner cannot be said to be any way prejudicial to the public order. In response to the query raised by the Court, learned AGP Ms. Nandini Joshi accepted the fact that the present case is covered by the decision of this Court in 2000(1) GLH 393 in case of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI V. POLICE COMMISSIONER, SURAT AND OTHERS. While dealing with the case cited above, this Court in para 20 and 21 has observed as under:

"20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal V. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T.Devaki V. State of Tamil Nadu, AIR 1990 SC 1986. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T.Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh V. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

So, without going into the other grounds agitated by the petitioner, I am inclined to allow this petition.

3. In the result, this petition is allowed. the impugned order of detention dated 14th August, 2002 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The petitioner detenu MANUJI MANU DARBAR PRATAPJI PARMAR is set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K.Buch,J)

Jayanti*