

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11106 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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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?

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SANJAY BALABHAI SOLANKI

Versus

STATE OF GUJARAT  
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Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1  
MS MITA PANTHAL, AGP for Respondent No. 1-3  
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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the  
petitioner has challenged the order dated 19.6.2003  
passed by the Police Commissioner, City of Rajkot,

against him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 19.6.2003.

2. The grounds served upon the petitioner, and as placed on record reveal that the detaining authority placed reliance on the registration of crimes, five in number, against the petitioner on 4.8.2002, 12.12.2002, 5.5.2003, 13.5.2003 and 10.6.2003 under Sections 457, 380, 511, 323 and 114 of the Indian Penal Code for committing thefts. The detaining authority also took into consideration the papers of the crimes registered against the petitioner. Some of the cases were pending before the the competent court while others were under investigation. The detaining authority also relied upon two in-camera statements as recorded by the sponsoring authority on 15.6.2003 and as verified by the detaining authority on 16.6.2003 revealing the incidents occurred on 7.5.2003 and 26.3.2003. Basing reliance on the above material, the detaining authority passed the order of detention against the petitioner.

3. Learned Advocate Mrs.Subhadra G. Patel for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP for the respondents, from the rival contentions, this petition can be considered and be decided on the sole ground whether from the allegations made and material relied upon by the detaining authority, it can be said whether the public order was disturbed. In this respect, the detaining authority placed reliance upon the registration of crimes against the the petitioner. The cases are registered against the petitioner under Sections 417 and 380 of the Indian Penal Code for thefts. The fact of registration of crimes against the petitioner on above said charges can hardly be said to be the activities affecting the public order. Thereafter, the detaining authority relied upon two in-camera statements, as noted above. While going through those statements, it is found that the general allegations as to the tendency and propensity of the petitioner is stated by the witnesses but the incident which occurred on 7.5.2003 as narrated by the witness, reveal that on that day when witness was

doing his business, the petitioner and his associates approached the petitioner and purchased pan, etc without offering the price for the goods they had purchased. On the contrary, the petitioner and his associates demanded Rs. 200/- from the petitioner, but the petitioner refused to lend money to the petitioner and, therefore, the witness was beaten by the petitioner and his associates, while in other incident, which occurred on 26.3.2003, the witness narrated that at about 7.00 p.m. when he was present at his business place, the petitioner and his associates approached the witness and demanded food to eat. All the persons including petitioner were in drunken condition. So, the witness attempted to persuade the petitioner and his associates to spare himself but on such persuasion by the witness, the petitioner was instigated and started beating the witness and caused damage to his business place. Having regard to the totality of the circumstances as narrated by the witnesses in the above said incidents, it can be said that, at the most, those incidents refer to the maintenance of law and order than the activities prejudicial to the maintenance of public order. It is always length, magnitude and intensity of the questionable of the activities of a person, which is vital to decide whether given objectionable activities can be said to be prejudicial to the maintenance of public order or merely law and order. Having regard to the statements and taking the facts in its totality, it transpires that these are individual disputes picked up by the petitioner rather than committing the activities by which the society at large was affected or particular community or locality was affected. In this view of the matter, having regard to the grounds served upon the petitioner, it appears that there was no material before the detaining authority to come to the conclusion that the objectionable activities of the petitioner as alleged were prejudicial to the maintenance of the public order. Therefore, the order in question is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Rajkot City, on 19.06.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair