

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 944 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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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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FIROZSHAH SAKHIDADSHAH PATHAN

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 944 of 2004  
MR MAHESH BHAVSAR for Petitioner No. 1  
Ms P B Sheth, AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner abovenamed has preferred this  
petition under Article 226 of the Constitution of India

for appropriate writ, order or direction for quashing and setting aside an order of detention of the petitioner dated 2.8.2003 recorded by respondent no.2 herein in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985.

2. The case against the petitioner was that he was involved in 7 IPC offences punishable under section 379 read with section 114 of IPC on the ground that he had committed theft in respect of certain motor vehicles stated at pages 14 and 15 to the petition. It was also alleged against him that two unnamed witnesses have given statements against the detenu. On the strength of the above material, second respondent found that the petitioner was a dangerous person and, therefore, the order of detention was passed as aforesaid against him. The petitioner contends that the impugned order is illegal. It has also been contended that the petitioner was in judicial custody at the relevant point of time and, therefore, the order of detention was not required. The petitioner has, therefore, prayed that the present petition be allowed and the order of detention may be quashed and set aside.

3. On receipt of the petition, rule was issued. Ms. P B Sheth, learned AGP appeared for the respondents. I have heard the learned Advocates for the parties and have perused the papers. Learned AGP has produced affidavit of the detaining authority which is taken on record. During the course of hearing, it has been pointed out that the petitioner was detained along with Imrankhan Muslimkhan Pathan, who was also co-accused in the aforesaid offences and he was also involved in the aforesaid statements. The said detenu had filed Special Civil Application No.13539 of 2003 which came to be allowed by this Court on 27.11.2003. (Coram: Hon'ble Mr Justice A L Dave) It, therefore, is clear that the case of the present petitioner is on par with the case of the said co-detenu and when the co-detenu has been released and when the detention order against the said detenu was quashed and set aside, on the principle of parity, this petition is required to be allowed and the detention is required to be quashed.

4. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 2.8.2003 passed by respondent no.2 against the petitioner is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute accordingly. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp