

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15537 of 2003

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?

BHUPENDRABHAI @ BHOPA MOHAN - BHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15537 of 2003
M/S THAKKAR ASSOC. for Petitioner No. 1
MS P B SHETH AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 31/03/2004

ORAL JUDGEMENT

This is an application filed by the petitioner

above named u/s.226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 08/10/03 passed by respondent no.2 herein, u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the said Act") on the ground that the petitioner was involved in two offences punishable under the Bombay Prohibition Act, 1949 registered before Karjan Police Station at C.R.No.137/2003 and 138/2003 on 26/06/03 and 28/06/03 respectively.

2. It was alleged against the petitioner that three witnesses had given statements against the petitioner. On the strength of the above registered and unregistered cases, the petitioner was ordered to be detained.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended that the petitioner was not supplied with copies of statements and that the representation of the petitioner was not decided promptly. That, therefore, the order of his detention is illegal and it is required to be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

5. The learned advocate for the petitioner has contended that the petitioner had submitted his representation dated 18/10/03 to the District Magistrate, Vadodara, copy of which is placed at Annexure 'C'. In para 5 of the said representation, certain copies of documents were sought by the learned advocate for the petitioner. It included copies of statements of Police Constables - Paresh Ramkrushna and Ketan Natubhai. The learned advocate for the petitioner contends that those statements have still not been supplied. In support of the said argument, he has produced on record a reply received from the District Magistrate, Vadodara dated 03/11/03.

6. Now, if we look at the list of documents supplied to the petitioner, we find at Sr.No.13 and 14 references to witnesses Ketankumar Harubha and Harishkumar Ramkrushna. If we refer to the copy of the First Information Report in C.R.No.137/2003 at page 1, we find references to Ketan Natubhai and Paresh Ramkrushna.

7. The learned AGP has tried to explain that there is typographical error in mentioning the names of the said witnesses. This error has not been explained anywhere. When the names of the witnesses are stated in the F.I.R. as Ketankumar Harubha and Harishkumar Ramkrushna, then in that event, it is clear that the names referred in the F.I.R. are different from the names referred in the list of witnesses and statements of the witnesses.

8. In absence of any clarification, either by way of affidavit or by way of reply dated 03/11/03, the petitioner was unaware about the aforesaid error said to have been committed while preparing the F.I.R.

9. In that view of the matter, it is clear that when the F.I.R. contained the names of two witnesses whose statements have not been supplied and in respect of whom clarification has not been rendered, either in the reply dated 03/11/03 or by way of any affidavit, then in that event, it has to be accepted that the copies of statements of witnesses sought by the petitioner were not supplied to the petitioner, and therefore, the petitioner was deprived of submitting a valuable and effective representation against his detention.

10. A right to submit an effective representation is a constitutional right guaranteed under Article 22(5) of the Constitution of India. Once there is a violation of the said right, then the further continuation of the detention of the petitioner cannot be sustained. So far the statements of witnesses are concerned, this Court (Hon'ble Mr. Justice A.L. Dave) in S.C.A.No.11335/2001 has held that there must be credible material to show that the witnesses had actual fear and therefore, the names were not disclosed.

11. In the present case, we find that such materials have not been made available on record. The learned AGP has contended that once an inquiry is started then the names of the witnesses would be disclosed and therefore, the entire object of making provision in Section 9(2) of the said Act would be frustrated. It can be said that without naming the said three witnesses, inquiry could be made and it could be ascertained whether there was a reasonable apprehension in the mind of the said witnesses. The said material was not before the detaining authority or at least it does not appear from the record that the detaining authority had credible material with it to assess the fear in the minds of the witnesses. In absence of such a material, the names of

the witnesses could not be withheld and the privilege u/s.9(2) could not have been claimed.

12. In view of the aforesaid discussion, the further detention of the petitioner cannot be sustained in the eye of law and therefore, it is required to be quashed and set aside.

13. For the foregoing reason, this petition is allowed. The impugned order of detention dated 08/10/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Bhupendrabhai @ Bhopa Mohanbhai Chauhan, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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