

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2085 of 2005

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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BHAVESH MAFATLAL PATEL

Versus

THE POLICE COMMISSIONER

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Appearance:

1. Special Civil Application No. 2085 of 2005  
MR VIJAY PATEL FOR HL PATEL ADVOCATES for Petitioner  
MR IM PANDYA, AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Surat

City, on 30th November, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 30th November, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials in arriving at subjective satisfaction. Firstly, the detaining authority took into consideration two crimes registered against the petitioner for the offences punishable under Sections 394, 397, 120-B and 342 of the Indian Penal Code and under Section 25(1)A of the Indian Arms Act, 1959, both before Varachha Police Station, Surat. The first crime was registered on 10th June, 2004 wherein the petitioner was, according to the allegations, involved in robbery of raw diamonds and Maruti Zen Car. The second case was registered on 2nd July, 2004 wherein the petitioner was found to have involved in robbery of hero-honda and robbed diamonds worth Rs.30,000-00. The detaining authority took into consideration thoroughly and exhaustively investigation papers in both the cases and came to the conclusion that the petitioner was a habitual offender.

3. Secondly, the detaining authority relied upon two incamera statements as recorded by the sponsoring authority on 30th October, 2004 and 31st October, 2004 as verified by the detaining authority on 26th November, 2004. The identity of the witness is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. The first witness referred to an incident occurred on 21st August, 2004, while the witness was passing through Varachha Police Station area, the petitioner and his accomplices accosted him and demanded everything which the witness possessed. The witness stated that he had nothing with him. The witness was beaten by the petitioner and his accomplices, though the crowd was gathered, but the same was dispersed on account of fear and terror of the petitioner. Ultimately the public order was disturbed and the petitioner snatched cash of Rs.2,000-00 and diamonds worth Rs.5,000-00 from the witness. The second incident was occurred on 5th September, 2004, while the witness was passing through Varachha Police Station area, at about 13.00 hours, he was rounded by the petitioner and his accomplices. The witness was threatened and to produce whatever was with him and to hand over the same to the petitioner. The petitioner attempted to snatch wallet from the pocket of the witness and on refusal, the witness was beaten. The

shouts for help raised by the witness, attracted the crowd, but non-dared to rescue the witness. The crowd was dispersed on account of fear and terror of the petitioner and public order was disturbed. Ultimately the petitioner snatched Rs.4,000-00 in cash from the witness and one gold ring from the witness.

4. From the above material, the detaining authority came to the conclusion that the petitioner was indulged in illegal activities of committing robbery and extorting money from the innocent citizens. The detaining authority concluded that the petitioner was a dangerous person within the meaning of PASA Act. The detaining authority came to the conclusion that the petitioner was ferocious and violent temperament and was beating and harassing innocent citizens for executing his illegal activities. On account of terror and fear of the petitioner, nobody dared to file any complaint against him. The detaining authority concluded that the activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering other alternative remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act as dangerous person to prevent his illegal activities forthwith. The detaining authority, therefore, passed an order of detention of the petitioner as aforesaid which is under challenged in this petition.

5. Learned advocate Mr.V.H.Patel for the petitioner and learned AGP Mr.I.M.Pandya for the respondents were heard at length.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the right of the petitioner to make effective representation as guaranteed under Article 22(5) of the Constitution of India is breached.

7. Admittedly, the detaining authority placed reliance upon the investigation papers of the two crimes registered against the petitioner. On going through the papers as served upon the petitioner at the time of execution of the order upon the petitioner, panchnamas placed at pages No.7, 8 and 9 are relied upon by the detaining authority. The copies of the panchnamas placed on record at pages No.8, 9 and 10 are typed copies and do

not bear or display the signature of the panchas in any of the three panchnamas. The original panchnamas undoubtedly must be bearing the signatures or thumb marks as the case may be of the persons who were panchas of the said panchnamas. This exact position is not reflected in the copies of the panchnamas served upon the petitioner. The petitioner vide his representation dated 17th December, 2004 which he preferred to the State Government stated clearly that the said panchnamas were infact not signed by the panchas purported to have signed the said panchnamas. It was also requested in the said representation that the petitioner be served with the xerox copies of the said panchnamas to make effective representation, no such copies were provided to the petitioner by the detaining authority or the Government.

8. In the above mentioned fact situation, it is abundantly clear that in absence of the documents as prayed for by the petitioner, the right to make effective representation guaranteed under Article 22(5) of the Constitution of India is breached and further detention of the petitioner has become bad in law. The order challenged in this petition, is required to be quashed and set aside on this ground alone.

9. In the result, the petition is allowed. The order passed by Police Commissioner, Surat City on 30th November, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Bhaveshbhai Mafatlal Patel, is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)