

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2629 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?

BAHARUDDIN @ FIROZ ROF AHMED SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2629 of 2005
MS KRISHNA U MISHRA for Petitioner No. 1
MR IM PANDYA, AGP for Respondents
-

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, Vadodara

City, on 20th September, 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 20th September, 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 to arrive at subjective satisfaction, firstly, the detaining authority took into consideration two crimes registered against the petitioner one before City Police Station on 9th August, 2004 and second before Ravpura Police Station on 17th August, 2004. In both the cases, it was alleged that the petitioner was involved in theft of Tata Sumo Cars. The detaining authority examined thoroughly and exhaustively the investigation papers in both the crimes and came to the conclusion that the petitioner was a habitual offender of committing theft in respect of vehicles.

3. Secondly, the detaining authority relied upon two incamera statements as recorded on 14th September, 2004 and 15th September, 2004 and verified by the detaining authority on 19th September, 2004. The identities of the witnesses are not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act. Out of these two witnesses, the first witness referred to an incident occurred on 4th August, 2004 wherein the witness found that the petitioner and his accomplices tampering with the doorlock of Tata Sumo Car of the witness, which he had parked near Telecom Office. On accosting by the witness, the petitioner and his accomplices were excited and started beating the witness, a crowd was gathered, but the same was dispersed on account of fear of the petitioner and the public order was disturbed. The second witness referred to an incident occurred on 6th August, 2004. At about 5.00 P.M. there also, the witness after parking his Maruti Fronti Car at near Karelilbag and went to purchase vegetables from the market and on returning, he show that the petitioner and his accomplices were tampering with the doorlock of his car. On accosting by the witness, he was beaten and threatened by the petitioner and his accomplices. Though a crowd was gathered, but the same was dispersed on account of fear of the petitioner and public order was disturbed.

4. Relying upon the above material, the detaining authority came to the conclusion that the petitioner was engaged in illegal activities of committing the theft of

vehicles and was an habitual offender. The detaining authority concluded that the petitioner was a dangerous person within the meaning of PASA Act. The detaining authority concluded that the petitioner was headstrong and ferocious person and after forming gang of headstrong persons along with such person committing of theft and was in habit of picking up quarrels with the innocent citizens and to beat them. The detaining authority concluded that the activities of the petitioner were prejudicial to the maintenance of public order and was required to be prevented forthwith. After considering other alternative, 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, which is under challenged in this petition.

5. Learned advocate Ms.K.U.Mishra for the petitioner and learned AGP Mr.I.M.Pandya for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP is taken into consideration.

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 detaining authority applied mind properly to the material placed before him to arrive at subjective satisfaction.

7. From the grounds of detention, it is clear that in both the crimes registered against the petitioner, he was under judicial custody in both the cases, when the order of detention was served upon him. In this respect, the detaining authority reached to the subjective satisfaction that the petitioner was likely to file applications for bail in the said cases and was likely to be released on bail by the Competent Court. The detaining authority also concluded that on so releasing on bail, the petitioner was likely to indulge in illegal activities.

6. The facts of the present case are squarely covered by the decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed

that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was held liable to be quashed.

7. True it is that the order of detention can be passed and executed upon the detenu, even if, the detenu is in judicial custody. The judicial custody necessarily implied that the detenu is out of circulation and in confinement. Therefore, in this respect the law is established that though the order of detention can be passed and executed, even if, the detenu is in custody, than the subjective satisfaction of the detaining authority that the custody of the detenu was likely to be ended, must be based upon the cogent materials. This is the ratio laid down by the Apex Court in the matter of Amritlal [supra]. In the present case, it becomes clear from the grounds of detention that the petitioner was arrested on 24th August, 2004 in a crime registered against him before Ravpura Police Station, right from 24th August, 2004 till 20th September, 2004, i.e. date of executing detention order, the detenu was in judicial custody in both the cases. The petitioner had not even moved any bail applications in such cases which becomes clear from the grounds of detention because the detaining authority mentioned in the grounds that the petitioner was likely to move applications for bail in the said two cases. Though the Apex Court made it clear in abovesaid decision that the filing of an application for bail is not itself a cogent material to infer that the petitioner was likely to be released on bail. In the present case, the petitioner had not preferred even applications for bail till the execution of the order of detention. The subjective satisfaction, therefore, arrived at by the detaining authority that firstly, the petitioner was likely to move applications for bail and again going further that on filing of such applications for bail, the petitioner was likely to be released on bail, is not based on any materials placed before the detaining authority let alone any cogent material. Learned advocate for the petitioner makes a statement that subsequently, the petitioner filed applications for bail and he might have been released on bail. The point in issue is whether the detaining authority applied mind properly in arriving at subjective satisfaction. In the above view of the matter, it becomes clear that on two aspects, firstly for moving applications for bail and

secondly releasing the petitioner on bail, no material at all appears to have been placed before the detaining authority and the detaining authority reached to the positive conclusion in this respect. In both the above aspects, the subjective satisfaction arrived at by the detaining authority is not valid, legal and in accordance with law. The order under challenged, therefore, is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the Police Commissioner, Vadodara City on 20th September, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Baharuddin @ Firoz Rof Ahemad Shaikh 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)