

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3238 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S. DAVE

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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BHIKHAN MUNSHI SHAIKH - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS JAYSHREE C BHATT for Petitioner(s) : 1,
MR RASHESH RINDANI ASST GOVERNMENT PLEADER for Respondent(s) : 1, 3,
RULE SERVED BY DS for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 29/06/2012

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. This petition is directed against the order of

detention dated 11.01.2012 passed by respondent No.2, in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short "the Act") by detaining the detainee as a "dangerous person" as defined under Section 2(c) of the Act.

3. Learned counsel for the detainee submits that the order of detention impugned in this petition deserves to be quashed and set aside and the ground that the registration of criminal complaint itself cannot bring the case of the detainee within the purview of definition "dangerous person" under Section 2(c) of the Act. Learned counsel for the detainee further submits that the illegal activity carried out as alleged cannot have any nexus or bearing with the maintenance of the public order and at the most it can be said to be breach of law and order. Further, except statements of witnesses and registration of FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detainee with breach of the public order.

4. Learned counsel for the detainee, placing reliance on the decisions reported in cases of (i) **Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat** reported in 2000(3) GLR 2696; (ii) **Ashokbhai Jivraj @ jivabhai Solanki Vs. Police Commissioner, Surat** reported in 2000(1) GLH 393; and (iii) **Mustakmiya Jabbarmiya Shaikh Vs.**

M.M.Mehta, reported in (1995)3 SCC 237, submitted that the case on hand is squarely covered by the ratio laid down in the aforesaid decisions. Learned counsel for the detenue further submits that it is not possible to hold in the facts of the present case that the activities of the detenue with reference to the criminal case/s had affected even tempo of the society, posing a threat to the very existence of the normal and routine life of the people at large or that on the basis of the criminal case/s, the detenue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by the rule of law by disturbing the public order.

5. Learned AGP for the respondent-State supported the detention order passed by the authority and submitted that the detenue is a dangerous person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenue, indicating that the detenue is in habit of indulging into activities as defined under Section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and the detention order deserves to be upheld by this Court.

6. Heard learned counsel for the parties. Even as per the affidavit-in-reply filed by the detaining authority, it is not in dispute that alleged

offence was registered on 16.04.2010 and the accused-detenu came to be enlarged on bail on 03.11.2011 and thereafter, the order of detention was passed after about 2 months and therefore, it cannot be said that dangerous activities of the detenu could have affected the public order. It appears that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law inasmuch as the offences alleged in the FIR cannot have any bearing on the public order since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenu cannot be said to be germane for the purpose of bringing the detenu as a dangerous person within the meaning of Section 2(c) of the Act and, unless and until the material is there to make out a case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the whole social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenu is a dangerous person within the meaning of Section 2(c) of the Act. Except general statement, there is no material on record which shows that the detenu is acting in such a manner which is dangerous to the public order. In view of the ratio laid down by the Hon'ble Supreme Court in the case of (I) Ranubhai Bhikhabhai Bharwad

(Vekaria) (supra); (ii) Ashokbhai jivraj @ jivabhai Solanki (supra); and (iii) Mustakmiya jabbarmiya Shaikh (supra), the Court is of the opinion that the activities of the detenue cannot be said to be dangerous to the maintainance of public order and at the most fall under the maintainance of "law and order".

7. In view of the above, I am inclined to allow this petition because simplicitor registration of FIR by itself cannot have any nexus with the breach of maintainance of public order and the authority can take recourse under the Indian Penal Code and no other relevant or cogent material exists for invoking powers under Section 3(2) of the Act.

8. In the result, this Special Civil Application is allowed. The impugned order of detention dated 11.01.2012 passed by the respondent No.2 is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case.

9. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[ANANT S. DAVE, J.]

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