

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6309 of 2015

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SABIR SIDIKBHAI MANEK....Petitioner(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

Appearance:

MR BHAVIN S RAIYANI, ADVOCATE for the Petitioner(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 2 - 3

MR TIRTHRAJ PANDYA, ASSTT. GOVERNMENT PLEADER for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/05/2015

ORAL JUDGMENT

[1.0] By way of this petition under Article 226 of the Constitution of India, petitioner has prayed for an appropriate writ, direction and order to quash and set aside the order of detention passed by the respondent No.2 herein against the petitioner under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA Act") at pre-execution stage.

[2.0] Shri Bhavin Raiyani, learned advocate for the petitioner has

vehemently submitted that the order of detention is already passed, however the same is not executed. It is submitted that order of detention has been passed solely on the basis of single FIR being II-CR No.173 of 2014 dated 02.12.2014 registered with the Gandhigram Police Station, District Rajkot. It is submitted that apart from the fact that on the basis of single FIR, order of detention cannot be passed, in fact basis for order of detention i.e. FIR being II-CR No.173 of 2014 itself has been quashed and set aside by this Court. It is submitted that therefore, the impugned order of detention can be said to have been passed on extraneous and irrelevant ground. It is submitted that therefore, even considering the para 30 of the decision of the Hon'ble Supreme Court in the case of **Additional Secretary to the Government of India and another vs. Smt. Alka Subhash Gadhia** reported in 1992 (Suppl) 1 SCC 496, a case is made out to quash and set the impugned order of detention at pre-execution stage.

[3.0] Shri Pandya, learned AGP has appeared on behalf of the respondent State. To satisfy *prima facie* whether order of detention has been passed on vague, extraneous and irrelevant ground or not, this Court has perused the relevant file, which is produced by the learned AGP after receiving it from the detaining authority. From the aforesaid, it appears that the order of detention has been passed against the petitioner detinue under the PASA on the basis of one FIR registered against the petitioner with Gandhigram Police Station, District Rajkot being II-CR No.173 of 2014 dated 02.12.2014. It is not disputed that aforesaid FIR has been quashed and set aside by this Court. Under the circumstances, as such there is no basis now to continue with the order of detention and / or passing the order of detention. Under the circumstances, it can be said that the order of detention has been passed on extraneous and / or irrelevant ground and therefore, a case is made out to exercise the powers under Article 226 of the Constitution of India

to consider the legality and validity of the order of detention at pre-execution stage. The case clearly falls within the parameters of law laid down by the Hon'ble Supreme Court in the case of **Smt. Alka Subhash Gadhia (supra)**, while entertaining and / or considering the petition challenging order of detention at pre-detention stage.

[4.0] In view of the above and for the reasons stated above, petition succeeds. The impugned order of detention passed against the petitioner dated 16.12.2014 passed under the provisions of PASA Act is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No costs. Direct service is permitted.

[5.0] Before parting with we strongly deprecate the practice of the concerned detaining authorities in the State to pass order of detention under the provisions of PASA Act solely on the basis of a single FIR and sometimes even a single FIR is even registered before long time and the period between committing the offence and/or lodging the FIR and passing the order of detention is very long. In number of decisions the Hon'ble Supreme Court and even this Court had quashed the similar orders and even recently the learned Single Judge in its judgment and order dated 27.01.2015 passed in Special Civil Application No.536/2015 had an occasion to consider the misuse of powers under the PASA Act. While quashing and setting aside the similar order of detention, the learned Single Judge has made the following observations:

“Before parting with we strongly deprecate the practice of the concerned detaining authorities in the State to pass the order of detention under the provisions of the PASA Act solely on the basis of a single FIR and sometimes even a single FIR is even registered before long time and the period between committing the offence and/or lodging the FIR and passing the order of detention is very long. In number of decisions the Hon'ble Supreme Court and even this Court had quashed the similar orders and even recently the learned Single Judge in its judgment and order dated 27.01.2015 passed in Special Civil Application No.536/2015 had an occasion to consider the misuse

of powers under the PASA Act. While quashing and setting aside the similar detention orders, the learned Single Judge has made the following observations.

The matter does not rest over here. I would like to observe something in addition to what I have stated above. I intend to say so keeping in mind that everyday not less than twenty-five matters are taken up for final hearing wherein the detention orders are challenged. I have observed that despite best of the efforts made by the learned AGPs appearing for the State, they are unable to defend the orders of detention. The reason for the same is plain and simple. The detention orders are often being passed just for the sake of passing and that too without achieving any object in that regard. The law so far as the preventive detention is concerned, is now as clear as a noon day. There are catena of decisions of the Supreme Court taking the view that the orders of preventive detention should not be passed in a casual manner. The powers of preventive detention being drastic and when the liberty of the citizen is put within the reach of the Authority, the action must comply not only with the substantial requirements of law, but it should be with those forms which alone can indicate the substance. The contravention of law always affects 'order' but before it could be said to affect 'public order', it must affect the community or the public at large. One has to imagine three concentric circles, the largest representing "law and order", the next representing, "public order" and the smallest representing "security of State". An act may affect "law and order" but not "public order", just as an act may affect "public order" but not "security of the State." Therefore, one must be careful in using these expressions.

Be that as it may, even if the periodical review of delegation of the power is not warranted, the same makes the responsibility and duty of the State Government more onerous when it comes to approving the order of detention passed by the Detaining Authority.

I find considerable merit in the submission of Mr.Mangukiya, the learned advocate appearing for the petitioner that while exercising the power of confirmation/approval of the order of detention, in accordance with sub-section (3) of Section 3 of the said Act, the State Government owes a duty to apply its mind to the order of detention. The stage of approval should not be treated as an empty formality. The Government owes a duty to see whether the order of detention passed by the Detaining Authority is in accordance with law, more particularly in conformity with the judicial pronouncements of the Supreme Court and the High Court of Gujarat. If the concerned Officer of the State Government had carefully read the present detention order, he might not have approved it at all in light of the said position

of law that mere registration of cases under the IPC is no ground to detain a person. The confirmation or the approval to the orders of detention in accordance with sub-section (3) of Section 3 of the PASA Act is an additional safeguard introduced by the statute, and therefore, the power of grant of approval cannot be mechanically exercised in a casual manner. The grant of approval to the order of detention in accordance with sub-section (3) of Section 3 is not an empty formality. The Government must examine whether the order is lawful and when called upon by the Court of law to show its application of mind, there should be something on record for the same. I am informed by the learned AGP that in the year 2014, almost three thousand and odd orders of detention were passed, out of which almost in 50% cases, it was recommended by the Advisory Board constituted under the Act to revoke the order. This itself is suggestive of the fact that the orders of preventive detention are more or less passed in a very casual manner.”

Despite the above and despite the fact that in number of cases such detention orders are quashed and set aside, the message has not reached to the State Government and the detaining authorities. It is the duty of the State to see that the powers under the PASA Act are not misused, as misuse of such powers of detention shall ultimately affect the liberty of a person.

[5.1] At this stage Mrs. Manisha Lavkumar, learned Government Pleader has intervened and has stated at the Bar that the State Government has taken the matter very seriously and the State Government is proposing to issue a detail circular/guidelines to all the concerned detaining authorities along with the relevant decisions of the Hon’ble Supreme Court and this Court so that in future as and when the detention orders are passed, the decisions of the Hon’ble Supreme Court and this Court on the point may be considered by the concerned appropriate detaining authority and the orders of detention are not passed mechanically and/or in a casual manner which ultimately if challenged may not sustain. She has placed on record the draft circular / guidelines for the perusal of the Court. She has also stated that by the aforesaid circular/guidelines which shall be issued by the Home

Department, State of Gujarat at the earliest and preferably within a period of two to three weeks from today, which shall supersede all earlier circulars of the Home Department. Let the State Government issue a detail circular and circulate to the concerned detaining authorities in the State along with the decisions of the Hon'ble Supreme Court as well as this Court on the point so that corrective measures are taken by the concerned detaining authorities and while passing the order of detention, there shall be due application of mind and in future it may not be said that detention orders are passed mechanically and/or in a casual manner.

Sd/-
(M.R. SHAH, J.)

Ajay