Rajendrakumar Natvarlal Shah

Vs.

State of Gujarat and Others

Criminal Appeal No. 319 of 1988 and Writ Petition (Criminal) No. 906 of 1987

(A. P. Sen, L. M. Sharma JJ)

10.05.1988.

JUDGMENT

SEN, J. –

1. This appeal by special leave brought from the judgment and order of the Gujarat High Court dated November 21, 1987 and the connected petition under Article 32 of the Constitution are directed against an order passed by the District Magistrate, Panchmahals, Godhra dated May 28, 1987 for the detention of the appellant under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 on being satisfied that it was necessary to do so, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order.

2. It is now an undisputed fact that the appellant is engaged as a commission agent or broker in the rather lucrative but illicit business of liquor traffic at Godhra in the State of Gujarat where there is total prohibition by importing different varieties of Indian made foreign liquor in sealed bottles like scotch whiskey, beer etc. from wine merchants of Vanswada in the State of Rajasthan. But then by engaging himself in such activities he falls within the description of a 'bootlegger' as defined in Section 2(b) and therefore comes within the ambit of sub-section (1) of Section 3 of the Act by reason of the legal fiction contained in sub-section (4) thereof.

3. But very briefly, the essential facts are these. On prior information that the appellant was about to import Indian made foreign liquor in bulk in truck bearing registration No. GRY 3832, on the night between December 29/30, 1986, the Gujarat police put up a road block on the bridge near Machan river where on a sign given it failed to stop. After a long chase, the police jeep was able to intercept the truck at Limdi. Both the driver Ahmed Saiyad Abdul Majid Kalander and cleaner Sadique Ahmed Yusuf Durvesh Shaik got down and said that the truck was empty. However, on a search it was found to be laden with 77 sealed cases containing 2040 bottles of different brands of scotch whiskey, beer etc. and it was evident from the statements of the driver and the cleaner who were arrested, that the appellant was the person who had purchased the liquor from wine merchants of Vanswada. On January 4, 1987 the statements of the witnesses were recorded. Apparently, the appellant absconded and he could not be traced till February 2, 1987 when he was arrested but later released on bail. In the meanwhile, he moved the Sessions Judge, Panchmahals for anticipatory bail on January 21, 1987 but no orders were passed inasmuch as the police made a statement that there was no proposal at that stage to place him under arrest. The appellant is being prosecuted for various offences under the Bombay Prohibition Act, 1949 as applicable to the State of Gujarat, in Criminal Case No. 154 of 1986. On May 28, 1987 i.e. after a lapse of five months the District Magistrate, Panchmahals, Godhra passed the order of detention along with the grounds therefor which was served on the appellant on the 30th when he was taken into custody. The immediate and

proximate cause for the detention was that on December 29/30, 1986 he transported in bulk foreign liquor from liquor merchants of Vanswada in the State of Rajasthan intended and meant for delivery to persons indulging in anti-social activities by doing illicit business of foreign liquor in the State of Gujarat. Incidentally, the grounds furnish particulars of two other criminal cases, namely, (i) Criminal Case No. 303 of 1982 on account of recovery of 142 bottles of foreign liquor recovered and seized from his residential house on July 21, 1982, but the case ended in an acquittal as the prosecution case witnesses turned hostile, and (ii) Criminal Case No. 150 of 1986 relating to recovery and seizure of 24 bottles of foreign liquor from his house on May 30, 1986 which case was still pending. It was said that persons like the appellant bringing foreign liquor from other State illegally without a permit on a brokerage and storing the same in their premises are not easily detected and there was no other method of preventing such persons from engaging in such anti-social activities except by detention under Section 3(2) of the Act.

4. In the writ petition before the High Court the appellant assailed the impugned order of detention mainly on two grounds, namely : (i) The failure of the detaining authority to record his subjective satisfaction as required under sub-section (2) of Section 3 that the importation of foreign liquor by the appellant from Vanswada across the border was likely to effect public health of the citizens of Gujarat and therefore it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to public order, renders the order of detention bad and invalid. (ii) There was no sufficient material on record on which such subjective satisfaction of the detaining authority could be reached. Neither of the two contentions prevailed with the High Court and it accordingly declined to interfere.

5. At the time when the judgment was to be delivered by the High Court, learned counsel appearing for the appellant sought permission to raise an additional point and he was permitted to do so. It was as to whether the detention of the detenu at Sabarmati Central Prison, which was a place other then Godhra where he ordinarily resides, was tantamount to a breach of the mandate of Article 21 of the Constitution as his detention at a far-off place was not consistent with human dignity and civilized norms of behaviour. The additional point so raised also did not find favour with the High Court. The appeal by special leave is directed against this judgment. Learned counsel for the appellant has however not preferred to raise these questions over again.

6. In the connected petition under Article 32 learned counsel for the appellant has, in substance, but forth the following contentions, namely : (1) There in no explanation forthcoming for the admitted delay of five months in making the impugned order of detention and such inordinate unexplained delay by itself was sufficient to vitiate the order. (2) The impugned order of detention was bad in law inasmuch as there was non-application of mind on the part of the detaining authority. There was nothing to show that there was awareness of the fact that the appellant had appellant had applied for grant of anticipatory bail nor was there anything to show that the detaining authority was satisfied about the compelling necessity to make an order for detention which, it is said, was punitive in character. It is said that there was no occasion to commit the appellant to prison while he was on bail in a criminal case facing charges under the Bombay Prohibition Act, 1949 merely on the suspicion of being a bootlegger. (3) The impugned order of detention was ultra vires the District Magistrate and void ab initio as it displayed lack of certainly and precision on the part of the detaining authority as to the purpose of detention. There was clubbing of purposes as it mentioned that such detention was necessary (i) in the interests of the nation with a view to stop the anti-national activities, (ii) for ensuring of public peace, (iii) for maintenance of public health, and (iv) in the interest of the State, all rolled up into one. (4) There was delay in the disposal of the representation made by the appellant to the State Government which renders his continued detention

invalid and constitutionally impermissible. We shall deal with the contentions in seriatim.

Point No. (1)

7. It has always been the view of this Court that detention of individuals without trial for any length of time, however short, is wholly inconsistent with the basic ideas of our government and the gravity of the evil to the community resulting from anti-social activities can never furnish and adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law. The court has therefore in a series of decisions forged certain procedural safeguards in the case of preventive detention of citizens. When the life and liberty of citizen is involved, it is expected that the government will insure that the constitutional safeguards embodied in Article 22(5) are strictly observed. When any person is detained in pursuance of an order made under any law of preventive detention, the authority making the order shall, as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. These procedural safeguards are ingrained in our system of judicial interpretation. The power of preventive detention by the government under any law for preventive detention is necessarily subject to the limitations enjoined on the exercise of such power by Article 22(5) as construed by this Court. Thus, this Court in Khudiram Das v. State of West Bengal [(1975) 2 SCC 81 : 1975 SCC (Cri) 435] speaking through Bhagwati, J. observed : [SCC p. 87 : SCC (Cri) p. 441, para 5]

> The constitutional imperatives enacted in this article are twofold : (1) the detaining authority must, as soon as may be, that is, as soon as practicable after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making a representation against the order of detention. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security.

As observed by this Court in Narendra Purshotam Umrao v. B. B. Gujral [(1979) 2 SCC 637 : (1979) 2 SCR 315 : 1979 SCC (Cri) 557 : 1979 Cri LJ 469] when the liberty of the subject is involved, whether it is under the Preventive Detention Act or the Maintenance of Internal Security Act or the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act or any other law providing for preventive detention : [SCC p. 642 : SCC (Cri) p. 562, para 17]

> .... it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law.

Nevertheless, the community has a vital interest in the proper enforcement of its laws particularly in an area such as conservation of foreign exchange and prevention of smuggling activities in dealing effectively with persons engaged in such smuggling and foreign exchange racketeering or with persons engaged in anti-national activities which threaten the very existence of the unity and integrity of the Union or with persons engaged in anti-social activities seeking to create public disorder in the worsening law and order situation, as unfortunately is the case in some of the States today, by ordering their preventive detention and at the same time, in assuring that the law is not used arbitrarily to suppress the citizen of his right to life and liberty. The court must therefore be circumspect in striking down the impugned order of detention where it meets with the requirements

of Article 22(5) of the Constitution.

8. There is an inexorable connection between the obligation on the part of the detaining authority to furnish the 'grounds' and the right given to the detenu to have an 'earliest opportunity' to make the representation. Since preventive detention is a serious inroad on individual liberty and its justification is the prevention of inherent danger of activity prejudicial to the community, the detaining authority must be satisfied as to the sufficiency of the grounds which justify the taking of the drastic measure of preventive detention. The requirements of Article 22(5) are satisfied once 'basic facts and materials' which weighted with the detaining authority in reaching his subjective satisfaction are communicated to the detenu. The test to be applied in respect of the contents of the grounds for the two purposes are quite different. For the first, the test is whether it is sufficient to satisfy the authority, for the second, the test is whether it is sufficient to enable the detenu to make his representation at the earliest opportunity which must, of course, be a real and affective opportunity. The court may examine the 'grounds' specified in the order of detention to see whether they are relevant to the circumstances under which preventive detention could be supported e.g. security of India or of a State, conservation and augmentation of foreign exchange and prevention of smuggling activities, maintenance of public order, etc. and set the detenu at liberty if there is no rational connection between the alleged activity of the detenu and the grounds relied upon, say public order.

9. In the enforcement of a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 there is apt to be some delay, between the prejudicial activities complained of under Section 3(1) of the Act and the making of an order of detention. When a person is detected in the act of smuggling or foreign exchange racketeering, the Directorate of Enforcement has to make a thorough investigation into all the facts with a view to determine the identity of the persons engaged in these operations which have a deleterious effect on the national economy. Quite often these activities are carried on by persons forming a syndicate or having a wide network and therefore this includes recording of statements of persons involved, examination of their books of accounts and other related documents. Effective administration and realisation of the purposes of the Act is often rendered difficult by reason of the clandestine manner in which the persons engaged in such operations carry on their activities and the consequent difficulties in securing sufficient evidence to comply with the rigid standards, insisted upon by the courts. Sometimes such investigation has to be carried on for months together due to the magnitude of the operations. Apart from taking various other measures i.e. launching of prosecution of the persons involved for contravention of the various provisions of the Acts in question and initiation of the adjudication proceedings, the Directorate has also to consider whether there was necessity in the public interest to direct the detention of such person or persons under Section 3(1) of the Act with a view to preventing them from acting in any manner prejudicial to the conservation and augmentation of foreign exchange or with a view to preventing them from engaging in smuggling of goods etc. The proposal has to be cleared at the highest quarter and is then placed before a Screening Committee. For aught we know, the screening Committee may meet once or twice a month. If the Screening Committee approves of the proposal, it would place the same before the detaining authority. Being conscious that the requirements of Article 22(5) would not be satisfied unless the 'basic facts and materials' which weighed with him in reaching his subjective satisfaction, are communicated to the detenu and the likelihood that the court would examine the grounds specified in the order of detention to see whether they were relevant to the circumstances under which the impugned order was passed, the detaining authority would necessarily insist upon sufficiency of the grounds which would justify the taking of the drastic measure of preventively detaining the person.

10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be draws between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are 'stale' or illusory or that there is no real nexus between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in Anil Kumar Bhasin v. Union of India [Cri W No. 410 of 1986, decided on February 2, 1987 (Del HC)], Bhupinder Singh v. Union of India [1985 DLT 493], Anwar Esmail Aibani v. Union of India [Cri W No. 375 of 1986, decided on December 11, 1986 (Del HC)], Surinder Pal Singh v. M. L. Wadhawan [Cri W No. 444 of 1986, decided on March 9, 1987 (Del HC)] and Ramesh Lal v. Delhi Administration [Cri W No. 43 of 1984, decided on April 16, 1984 (Del HC)] and other cases taking the same view do not lay down good law and are accordingly overruled.

11. In the present case, the direct and proximate cause for the impugned order of detention was the importation in bulk of Indian made foreign liquor by the appellant acting as a broker from across the border on the night between December 29/30, 1986. The District Magistrate in the counter-affidavit has averred that it was revealed from the statements of the witnesses recorded on January 4, 1987, that the appellant was the person actually involved. Apprehending his arrest the appellant applied for anticipatory bail on January 21, 1987. It appears that on the same day appellant (sic police) appears to have made a statement that there was no proposal at that stage to arrest the appellant. However, later it was discovered that there was not trace of the appellant. He was arrested on February 2, 1987 and on the same day he made a statement admitting these facts. Meanwhile, the proposal to detain the appellant was placed before the District Magistrate. It is averred by the District Magistrate that on a careful consideration of the material on record he was satisfied that it was necessary to make an order of detention of the appellant under Section 3(2) of the Act and that accordingly on May, 28, 1987 he passed the order of detention. The appellant was taken into custody on May 30, 1987. He had forwarded the report to the State Government on the 28th and the government accorded its approval on the 31st.

12. Even though there was no explanation for the delay between February 2 and May 28, 1987 it could not give rise to a legitimate inference that the subjective satisfaction arrived at by the District Magistrate was not genuine or that the grounds were stale or illusory or that there was no rational connection between the grounds and the impugned order of detention. There is a plethora of decisions of this Court as to the effect of unexplained delay in taking actions. These are admirably dealt with in Durga Das Basu's Shorter Constitution of India, 8th edn. at p. 154. We will only notice to a few salient decisions. In Olia Mallick v. State of West Bengal [(1974) 1 SCC 594 : 1974 SCC (Cri) 262] it was held that mere delay in making the order was not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention order. Since the

activities of the detenu marked him out as a member of a gang indulging systematically in the cutting of aluminium electric wire, the District Magistrate could have been well satisfied, even after the lapse of five months that it was necessary to pass the detention order to prevent him from acting in a manner prejudicial to the maintenance of the supply of electricity. In Golam Hussain v. Commissioner of Police [(1974) 4 SCC 530 : (1974) 3 SCR 613 : 1974 SCC (Cri) 566 : 1974 Cri LJ 938], it was held that the credible chain between the grounds of criminal activity alleged by the detaining authority and the purpose of detention, is snapped if there is too long and unexplained an interval between the offending acts and the order of detention. But no 'mechanical test by counting the months of the interval' was sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. The court has to investigate whether the causal connection has been broken in the circumstances of each case. In Odut Ali Miah v. State of West Bengal [(1974) 4 SCC 129 : 1974 SCC (Cri) 268] where the decision of the detaining authority was reached after about five months, Krishna Iyer, J. repelled the contention based on the ground of delay as a mere 'weed of straw' and it was held that the 'time lag' between the dates of the alleged incidents and the making of the order of detention was not so large that it could be said that no reasonable person could possibly have arrived at the satisfaction which the District Magistrate did on the basis of the alleged incidents. It follows that the test of proximity is not as rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. In Vijay Narain Singh v. State of Bihar [(1984) 3 SCC 14 : 1984 SCC (Cri) 361], one of us, Sen J. observed : [SCC p. 18 : SCC (Cri) 365, headnote]

> On merits the impugned order cannot be said to be vitiated because of some of the grounds of detention being non-existent or irrelevant or too remote in point of time to furnish a rational nexus for the subjective satisfaction of the detaining authority. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order.
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> See also : Gora v. State of West Bengal [(1975) 2 SCC 14 : (1975) 2 SCR 996 : 1975 SCC (Cri) 391 : AIR 1975 SC 473], Raj Kumar Singh v. State of Bihar [(1986) 4 SCC 407 : 1986 SCC (Cri) 481] and Hemlata Kantilal Shah v. State of Maharashtra [(1981) 4 SCC 647 : 1982 SCC (Cri) 16].

Point No. (2)

13. Quite recently, we had occasion to deal with this aspect in Bal Chand Bansal v. Union of India [(1988) 2 SCC 527 : 1988 SCC (Cri) 356]. In repelling a contention raised on the dictum in Ramesh Yadav v. District Magistrate, Etah [(1985) 4 SCC 232 : 1985 SCC (Cri) 514], one of us (Sharma, J) drew attention to the observations of Mukharji, J. in Suraj Pal Sahu v. State of Maharashtra [(1986) 4 SCC 378 : 1986 SCC (Cri) 452] that the prejudicial activities of the person detained were 'so interlikned and continuous in character and are of such nature' that they fully justified the detention order. Here the grounds of detention clearly advert to two earlier incidents, one of July 21, 1982 for which the detenu was being prosecuted in Criminal Case No. 303 of 1982 relating to the recovery and seizure of 142 bottles of foreign liquor from his residential house which ended in an acquittal because the prosecution witnesses turned hostile, and the other of May 30, 1986 for which Criminal Case No. 150 of 1986 relating to recovery and seizure of 24 bottles of foreign liquor from his house was then still pending, and go on to recite that the launching of the prosecution had no effect

inasmuch as he had not stopped his activities and was continuing the importation of foreign liquor from across the border. The earlier two incidents are not really the grounds for detention but they along with the transaction in question of importation of foreign liquor in bulk show that his activities in this transaction afforded sufficient ground for the prognosis that he would indulge in such anti-social activities again, if not detained. The District Magistrate in his counter-affidavit has stated that he was aware of the fact that the detenu had on January 21, 1987 applied for anticipatory bail but no orders were passed inasmuch as the police made a statement that there was no proposal at that stage to place him under arrest. It however appears that he was arrested on February 2, 1987 and on his own made a statement admitting the facts. Thereafter, he seems to have disappeared from Godhra. In the circumstances, it cannot be said that there was lack of awareness on the part of the District Magistrate on May 28, 1987 in passing the order of detention as he did. There is a mention in the grounds of the two criminal cases pending against the detenu and also a recital of the fact that he was continuing his business surreptitiously and he could not be caught easily and therefore there was compelling necessity to detain him.

Point No. (3)

14. The contention regarding lack of certainty and precision on the part of the detaining authority as to the real purpose of detention and that they were "all rolled up into one" at first blush appears to be attractive but on deeper reflection seems to be of little or no consequence. The purpose of the detention is with a view to preventing the appellant from acting in any manner prejudicial to the maintenance of public order. It was not seriously disputed before us that the prejudicial activities carried on by the appellant answer the description of a 'bootlegger' as defined in Section 2(b) and therefore he comes within the purview of sub-section (1) of Section 3 of the Act, by reason of sub-section (4) thereof. Sub-section (4) of Section 3 with the Explanation appended thereto gives an enlarged meaning to the words 'acting in any manner prejudicial to the maintenance of public order' and reads :

> (4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

Explanation. - For the purpose of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia, if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health.

The District Magistrate in passing the impugned order has recorded his subjective satisfaction with respect to the appellant that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order that he be detained. In the accompanying grounds for detention this is the basis for the formation of his subjective satisfaction. They go on to state that unless the order of detention was made he would not stop his illicit liquor traffic on brokerage and therefore it was necessary to detain him under Section 3(2) of the Act, and recite :

> In order to safeguard the health of the people of Gujarat, for public peace and in the interest of the nation, with a view to stop such anti-national activities.... for the purpose of public order and public peace and in the interest of the State.....

In our opinion, these words added by way of superscription were wholly unnecessary. They were set out by the District Magistrate presumably because of total prohibition in the State. In future, it would be better for the detaining authorities acting under Sections 3(1) and 3(2) of the Act, to avoid such unnecessary verbiage which are of little or no consequence and give rise to unnecessary debate at the Bar.

Point No. (4)

15. The contention that there was unexplained delay in disposal of the representation made by the appellant to the State Government appears to be wholly misconceived. Admittedly, the appellant made his representations to the State Government as well as to the Advisory Board on June 8, 1987. The State Government acted with promptitude and after due consideration ejected the same on June 12, 1987. There was no delay much less inordinate delay in consideration of the representation.

16. The result therefore is that the appeal as well as the writ petition fail and are dismissed.

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