

Piyush Kantilal Mehta

Vs

Commissioner of Police, Ahmedabad City and Another

Writ Petition (Criminal) No. 403 of 1988

(M. M. Dutt, S. Natarajan JJ)

16.12.1988

JUDGMENT

DUTT, J. –

1. In this writ petition, the petitioner has challenged the legality of the order of his detention dated August 3, 1988 passed by the Commissioner of Police, Ahmedabad City, under sub-section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985, hereinafter referred to as 'the Act'.

2. The grounds on which the impugned order of detention has been made run into seven pages. The relevant portions of which are extracted below :

In pursuance to Section 9(1) of the Gujarat Prevention of Anti-social Activities Act, 1985, Shri Piyush Kantilal Shah is hereby informed the grounds of detention as under :

You are indulging into anti-social activities by hoarding illegal foreign liquor and also selling it through yourself and through your servants near Navrangpura Municipal Bus-stand and Navrang High School, Ahmedabad. That the cases have been registered against you under Bombay prohibition Act, 1949 and in which you have been arrested.

#-----Sr. No. Police Stn. C.R.No.
Section Qty.seized Result----- 1.
Navrangpura 62/88 Prohibition 21795 Pending Act-Sections Ml. Ltr. 66(b), 65(a)
foreign (e), 81 liquor 2. Navrangpura 144/88 Prohibition 139750 Pending Act-
Sections Ml. Ltr. invest- 66(b), 65(a) foreign gation (e), 116(b)98 liquor-----
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Carefully considering the complaint, identification marks on your face and charge-sheet, it appears that you are a prohibition bootlegger and you are indulging into sale of foreign liquor in the aforesaid areas and you continue your anti-social activities. In the aforesaid area, you, your servants and associates indulge into use of force and violence and also beat innocent citizens by which an atmosphere of fear is created and by indulging into such activities, you are causing hindrance to maintenance of public order. You also show dangerous weapons to the citizens and also create an atmosphere of fear, and you are carrying on illegal liquor business. Because of your fear, citizens residing nearby are not in a position to speak anything against you and also do not file complaint against you. Because of your activities and your associates, the people of the aforesaid area feel

insecurity of their life and property and all these activities are causing hindrance to public order.

To substantiate that you are indulging into anti-social activities and that your activities are against the public order, certain persons residing in the aforesaid area who are peace loving have also given statements and the copy of the aforesaid statements are given to you.

Taking into consideration all that has been stated aforesaid, I am fully satisfied that you are prohibition bootlegger and by indulging into use of force and violence, you continue to indulge into illegal sale of liquor and you create an atmosphere of fear and terror by beating innocent citizens. That action against you has been taken under ordinary law and you have been released on bail. After being released on bail, you have continued your illegal anti-social activities and therefore if once again actions are taken under ordinary law against you, there are possibilities of your being released on bail and your continuing anti-social activities and since it is necessary to prevent you immediately for maintenance of public order, and since there is no other alternative, as a last resort, I order to detain you under the aforesaid Act.

3. It appears from the grounds extracted above and it is also not disputed that the petitioner had been prosecuted in two criminal cases. In FIR relating to case No. 62/88, the offence alleged to have been committed by the petitioner is that he was caught red-handed possessing English wines with foreign marks without any legal pass or permission to do so on April 13, 1988. In the second case being case No. 114/88, the offence, as alleged to have been committed by the petitioner and as recorded in the FIR, is that he was caught while shifting 296 bottles of foreign liquors in an Ambassador car without any pass, permit or licence. It is not disputed that in one of these two cases the petitioner has been acquitted and the other is pending, but the petitioner has not been convicted by any court.

4. In the grounds of detention, it is alleged that the petitioner is a prohibition bootlegger, and that by indulging in use of force and violence and by illegal sale of liquor, the petitioner creates an atmosphere of fear and terror by beating innocent citizens. It is also alleged that the petitioner is indulging in anti-social activities, and that the activities are against public order.

5. The statements of five persons, who have been described as witnesses 1 to 5, have been recorded before the order of detention was passed. The copies of their statements have been given to the petitioner, but their names have not been disclosed to the petitioner, and it is not disputed before us that in view of Section 9(2) of the Act, the detaining authority is entitled not to disclose the names to the detenu.

6. At this stage, it may be stated that the representation of the petitioner is pending before the Advisory Board. The question that has been raised on behalf of the respondents is whether in view of the pendency of the representation before the Advisory Board, the writ petition is maintainable under Article 32 of the Constitution. The question need not detain us long, for it has already been decided by this Court in *Prabhu Dayal Deorah v. District Magistrate, Kamrup*. In paragraph 16 of the Report Mathew, J., speaking for himself and Mukherjea, J., observed inter alia as follows : (SCC pp. 112-13, para 16)

We think that the fact that the Advisory Board would have to consider the representations of the petitioners where they have also raised the contention that the grounds are gave would not in any way prevent this Court from exercising its jurisdiction under Article 32 of the Constitution. The detenu has a right under Article 22(6) of the Constitution to be afforded the earliest opportunity of making a representation against the order of detention. That constitutional right includes within its

compass the right to the finished with adequate particulars of the grounds of the detention order. And, if their constitutional right is violated, they have every right to come to this Court under Article 32 complaining that their detention is bad as violating their fundamental right. As to what the Advisory Board might do in the exercise of its jurisdiction is not the concern of this Court.

7. In the above observation, this Court has specifically laid down that even though a representation is pending before the Advisory Board, the writ petition under Article 32 of the Constitution is maintainable before this Court. In the circumstances, we may proceed to dispose of the writ petition on merits.

8. In the detention order, the petitioner has been named as Piyush Kantilal Shah. According to the petitioner, he is Piyush Kantilal Mehta and not Piyush Kantilal Shah. It is alleged by the petitioner that the detaining authority has deliberately and mala fide detained him with a view to saving one Piyush Kantilal Shah. In order to substantiate that his name is not certain income tax challans, returns, a driving licence and some other documents wherein his name appears as Piyush Kantilal Mehta, the petitioner has filed certain income tax challans, returns, a driving licence and some other documents wherein his name appears as Piyush Kantilal Mehta. It is submitted by the petitioner that as he has been deliberately and wrongly described as Piyush Kantilal Shah in the order of detention, the same is illegal and should be quashed on this ground alone.

9. In his counter-affidavit, the Commissioner of Police, Ahmedabad city, who is the detaining authority, has averred that the petitioner has made false attempts to show that he is not Piyush Kantilal Shah, but Piyush Kantilal Mehta. It is pointed out that even at the time of the service of the order of detention, the petitioner had himself signed as Piyush Kantilal Shah in the presence of the Police Inspector, Navrangpura Police Station, Ahmedabad city. It is submitted that the petitioner is trying to mislead this Court by making a false attempt of changing his surname. We do not find any reason why we should not accept the statement of the Commissioner of Police as made in his affidavit. It is not disputed that the petitioner has signed his name as Piyush Kantilal Shah when the order of detention was served upon him. It is, however, alleged by the petitioner that he was forced to sign as Piyush Kantilal Shah. It is difficult for us to believe that the detaining authority will force the petitioner to sign his name as Piyush Kantilal Shah, if really his name is Piyush Kantilal Mehta. It may be that he has another name as Piyush Kantilal Mehta, but we are satisfied that the petitioner is also known as Piyush Kantilal Shah inasmuch as he himself had signed his name as Piyush Kantilal Shah.

10. In the grounds of detention, the relevant portions of which have been extracted above, it has been alleged that the petitioner is a prohibition bootlegger and indulges in the sale of foreign liquor in the area in question and continues his anti-social activities. A bootlegger has been defined in Section 2(b) of the Act as follows :

2. (b) 'bootlegger' means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing.

11. Now we may refer to Section 3 of the Act providing for making orders detaining certain persons. Section 3 reads as follows :

3. (1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, made an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an authorised officer he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

(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.

12. Under sub-section (1) of Section 3, an order of detention of a person can be passed with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. Sub-section (4) of Section 3 contains a deeming provision. Under sub-section (4), a bootlegger or a dangerous person or a drug offender shall be deemed to be acting in a manner prejudicial to the maintenance of public order when the activities of such a person affect adversely or are likely to affect adversely the maintenance of public order. In other words, although sub-section (4) contains a deeming provision, such deeming provision will not be attracted unless the activities of the person concerned affect adversely or are likely to affect adversely the maintenance of public order.

13. It is urged by Dr. Chitale, learned counsel appearing on behalf of the petitioner, that the grounds of detention are vague and there is nothing to show that the activities of the petitioner either affect or are likely to affect adversely the maintenance of public order. The learned counsel submits that it is not enough to allege that the petitioner is a bootlegger, but there must be sufficient materials to show that the activities of the petitioner affect or are likely to affect adversely the maintenance of

public order.

14. In the grounds of detention, two criminal cases have been mentioned. It is not disputed that in one of them the petitioner has been acquitted. In the FIR relating to case No. 62/88, the allegations against the petitioner are that he was caught red-handed with English wines with foreign marks without any legal pass or permission. In the FIR of the other case being case No. 144/88, the offence alleged to have been committed by the petitioner was that the petitioner was caught while travelling in an Ambassador car with 295 bottles containing foreign liquor without any pass, permit or licence. These cases have been mentioned in the detention order, presumably with a view to substantiating the allegation that the petitioner is a bootlegger. There can be no doubt that the offences that have been alleged to have been committed by the petitioner have no bearing on the question of maintenance of public order.

15. It is also alleged in the grounds of detention that the petitioner, his servants and associates indulge in the use of force and violence and also beat innocent citizens by which an atmosphere of fear is created and by indulging in such activities, the petitioner is causing hindrance to the maintenance of public order. It is further alleged that the petitioner shows dangerous weapons to the citizens and thereby creates an atmosphere of fear. These allegations are very general in character without reference to any particular incident or incidents in support of such allegations. The detaining authority has sought to substantiate the said allegations and connect the activities of the petitioner with the question of maintenance of public order by the statements of five witnesses. Apart from some minor incidents of beating by the petitioner, the witnesses have alleged that the petitioner is high-handed and fierce by nature; his high-handedness and bickering nature have caused terror to the public of the area; he is not afraid of the police, his activities are anti-social, he always keeps with him a knife and a revolver and he threatens surrounding people.

16. It is submitted by Dr. Chitale that the allegation which have been made by the said five witnesses against the petitioner are also very general in character and do not involve the question of public order. Counsel submits that there is a distinction between 'law and order' and 'public order'. The allegations made against the petitioner may give rise to a question of law and order but, surely, they have nothing to do with the question of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be materials to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The Commission of an offence will not necessarily come within the purview of 'public order'.

17. In this connection, we may refer to a decision of this Court in Pushkar Mukherjee v. State of West Bengal where the distinction between 'law and order' and 'public order' has been clearly laid down. Ramaswami, J. speaking for the court observed as follows : (SCC pp. 14-15)

Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always

affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act.

18. In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld.

19. Coming back to the question of vagueness of the grounds, it is submitted by Mr. Poti, learned counsel appearing on behalf of the respondents, that the grounds are not vague, and that they are supported by the statements of the witnesses. In our opinion, the statements of the witnesses are themselves vague and general in character. In Pushkar Mukherjee case, one of the grounds was : "You have become a menace to the society and there have been disturbances and confusion in the lives of peaceful citizens of Baraset and Khardah P. S. areas under 24-Parganas District and the inhabitants thereof are in constant dread of disturbances of public order." It was held by this Court that the ground was extremely vague and gave no particulars to enable the petitioners to make an adequate representation against the order of detention and it infringed the constitutional safeguard provided under Article 22(5) of the Constitution of India. In the instant case, the grounds of detention are more or less similar to the grounds in Pushkar Mukherjee case. The statements of witnesses do not, in our opinion, remove the vagueness of the grounds.

20. Some other grounds have been urged by Dr. Chitle with a view to substantiating the invalidity of the order of detention. As we have found that the order of detention cannot be sustained, as the grounds of detention suffer from vagueness and the allegations against the petitioner are not such as to raise the question of maintenance of public order, we do not think it necessary to consider the other grounds.

21. For the reasons aforesaid, we allow the writ petition and quash the impugned order of detention and direct that the petitioner be released forthwith.

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