

Mehboob Khan Nawab Khan Pathan

Vs

Police Commissioner, Ahmedabad and Another

Nasirkhan Nawabkhan Pathan

Vs

Police Commissioner, Ahmedabad and Another

Sharifkhan Nawabkhan Pathan

Vs

Police Commissioner, Ahmedabad and Another

Writ Petitions (Criminal) Nos. 478, 479 and 480 of 1988

(B. C. Ray, S. R. Pandian JJ)

25.07.1989

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. The above three writ petitions under Article 32 of the Constitution of India, filed by three different petitioners/detenus are heard together and disposed of by this common judgment as common contentions are raised challenging the validity of the impugned orders of detention dated September 16, 1988.
2. The detention orders in the above cases were passed by the Commissioner of Police, Ahmedabad, the first respondent herein, in exercise of the powers conferred by sub-section (i) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 - hereinafter referred to as the 'Act' - with a view to preventing the petitioners/detenus from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad city. All the grounds of detention which are similar except the reference of the cases registered against each of the petitioners spell out that the detaining authority has reached his subjective satisfaction on the materials placed before him that all the petitioners are 'dangerous persons' within the ambit of Section 2(c). At the end of each of the grounds of detention, it is specifically averred that "the copies of the papers shown in the schedule are given to you hereby" meaning thereby that all the cases noted in Annexure 'D' have been taken into consideration against each of the writ petitioners for holding that they are all 'dangerous persons'. We would like to reproduce Annexure 'D' to the grounds of detention for appreciating the contentions urged on behalf of the petitioners :

The sheet showing the fact of the papers of the secret inquiry against (1) Nasirkhan
(2) Sharifkhan and (3) Mehboobkhan

#Sl. No. Details of Papers Date Page No. Remarks1. True copy of FIR of May 29, 1984 1 to 6 Kagdapith I. 209/842. True copy of face marks June 13, 1986 7 to 38 registered and charge- sheet of FIR Maninagar I.122/863. True copy of FIR and February 4, 39 to 48 face marks registered 1988 of Karanj Police Station I. 70/884. True copy of FIR and September 13, 49 to 60 face marks registered 1988 Kagadapith II. 464/885. True copy of record of September 7, 61 to 62 entry number 20 KC dated 1988 September 7, 19886. True copy of FIR of August 23, 63 to 72 Prohibition 379/88 19887. Statement of witness 1 September 13, 73 to 74 19888. Statement of witness 2 September 13, 75 to 76 19889. Statement of witness 3 September 14, 77 to 78 198810. Statement of witness 4 September 14, 79 to 80 1988 Sd/ Police Inspector, Kagadapith, Ahmedabad city.##

3. The learned counsel appearing for the petitioners assailed the validity of the impugned orders of detention on the ground that they suffer from the vices of non-application of mind and extraneous consideration. Before advertng to the arguments advanced by the learned counsel, we shall mention that all the three writ petitioners/detenus and one Ayubkhan Nawabkhan are brothers and admittedly there is no detention order against Ayubkhan Nawabkhan. As stated supra, these impugned orders are based on the sole ground that the petitioners are 'dangerous persons'.

4. In the grounds of detention under challenge in Writ Petition No. 478 of 1988 only two cases, registered against the detenu Mehboobkhan Nawabkhan are shown to have been considered for holding that the petitioner is a 'dangerous person' within the definition of Section 2(c) of the Act. These two cases are shown under serial Nos. 2 and 4 of Annexure 'D', extracted above. It is not in dispute that this writ petitioner is not at all concerned in any of the other cases mentioned under serial Nos. 1, 3, 5 and 6 in Annexure 'D'.

5. In the grounds of detention, concerned in Writ Petition No. 479 of 1988 - three cases registered against the petitioner are referred to have been considered for bringing him within the meaning of Section 2(c) of the Act and those cases are mentioned under serial Nos. 2, 3 and 4 of Annexure 'D'. It is not in controversy as in the case of Writ Petition No. 478 of 1988 that this writ petitioner (detenu) Nasirkhan Nawabkhan Pathan is not concerned in any one of the other cases under serial Nos. 1, 5 and 6 of Annexure 'D'.

6. Similarly in the grounds of detention, concerned in Writ Petition No. 480 of 1988, four cases are made mention of as having been considered for bringing the writ petitioner/detenu (Sharifkhan Nawabkhan Pathan) within the definition of Section 2(c). As in the other two cases, this writ petitioner/detenu is in no way connected with the cases shown under serial Nos. 5 and 6 in Annexure 'D'. Admittedly serial No. 5 of Annexure 'D' relates to a fruitless prohibition raid conducted in a place under the occupation of Ayubkhan Nawabkhan in respect of which no case was registered. The case shown under serial No. 6 is a case registered only against Ayubkhan Nawabkhan under the Prohibition Act.

7. It is, thus, demonstrably shown that the detaining authority has not applied his mind properly confining his consideration only with reference to incidents mentioned in the grounds of detention, and has mechanically passed these orders taking into consideration various extraneous matters, namely the incidents other than those shown in the grounds of detention - especially incidents under serial Nos. 5 and 6 of Annexure 'D' with which the detenus have no direct or indirect connection or participation. We, therefore, agree with the submission made by the learned counsel for the petitioners that these three detention orders suffer from the vices of non-application of mind and

extraneous consideration. The counter-argument advanced by the learned counsel for the respondents that the detaining authority has drawn his subjective satisfaction only on the materials mentioned in the grounds of detention and passed these detention orders by proper application of mind to these materials and as such the impugned orders are not vitiated cannot be accepted for the reasons mentioned above.

8. Lastly it has been urged by the learned counsel for the petitioners that the petitioners have been deprived of making effective and purposeful representations as envisaged under Article 22 (5) of the Constitution of India to the authorities concerned since the detaining authority for bringing them within the definition of Section 2(c) has taken into consideration certain extraneous matters with which the petitioners have no connection whatsoever. This submission, in our view, cannot be easily brushed aside as having no force.

9. In the result for the abovementioned reasons, we allow all the writ petitions and direct the petitioners/detenus to be set at liberty forthwith.

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