

Jahangirkhan Fazalkhan Pathan

Vs

Police Commissioner, Ahmedabad and Another

Writ Petition (Criminal) No. 485 of 1988

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

27.071989

JUDGMENT

B. C. RAY, J. -

1. The petitioner has questioned in this writ petition the legality and validity of the impugned order of detention made on October 12, 1985 by respondent 1 under sub-section (1) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 with a view to prevent him from acting in any manner prejudicial to the maintenance of public order in the area of Ahmedabad city. The petitioner was detained by the respondents and was served with the grounds of detention along with the documents mentioned therein on the very day of detention that is, October 12, 1985. The grounds of detention were in Gujarati.

2. The petitioner in the writ petition has stated that he was previously detained under the National Security Act, 1980 S. R. NO./PCB/DTN/PASA/37/85 on May 23, 1985 and was released on June 28, 1985. The petitioner had been detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 hereinafter referred to in short as 'PASA Act'. The said order was challenged by writ petition before the Gujarat High Court which quashed the same and the petitioner was released from detention. The main thrust of challenge to the impugned order of detention is that the detaining authority in addition to new facts has taken into consideration the earlier two detention orders as well as the grounds of detention referred to therein presumably for the purpose of arriving at his subjective satisfaction that in spite of the earlier detention order which was of course, quashed and set aside the detenu has been persistently continuing his anti-social activities and as such the order of detention was clamped. This has vitiated the impugned order of detention. Other challenges such as non-disclosure of names and addresses of four witnesses whose statements have been mentioned with the grounds of detention and have been served along with the grounds as well as the vagueness of the statements made in the grounds about the alleged criminal activities of the detenu has rendered the order illegal and bad as the petitioner was prevented from making an effective representation against the same.

3. The relevant portion of the grounds are extracted hereunder :

You are indulged into anti-social activities by selling, stocking and keeping in possession of yourself or through other person the English and Deshi liquor of Dariapur area; in this connection the offences under Bombay Prohibition Act, 1949 are registered against you, wherein you were arrested, the details of which is as under

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#-----Sl. Police Offence
Section Stock DisposalNo. Station Register Seized No.-----
-----1. Dariapur 106/88 Prohibition Act, 7575 ml. Under
in- Sections 66(3), English vestigation 65-A, 65-E, 68, 5 lt. 81, 85(1)(3) Deshi
Liquor. Rs. 19712. " 120/88 Prohibition Act, 8640 ml. " Sections 66(3), English 65-
A, 65-E, 68, liquor. 81, 85(1)(3). Rs. 940.3. " 137/88 Prohibition Act, 3105 ml. "
Sections 66-B, English 65-E, 81. liquor. Rs. 940.4. " 145/88 " 166 bottles " English
liquor. Rs. 1300.5. " 146/88 Prohibition Act, 82 lt. Sections 66-B, English " 65-E.
liquor. Rs. 800.-----###

Accordingly, upon careful perusal of the complaint and papers enclosed with the proposal it appears that you are a Prohibition Bootlegger, and doing illegal activity of selling English and Deshi liquor. You and your companions are bearing and showing deadly weapons like Rampuri knife to the innocent persons passing through the said locality on the premise of being 'Batmidar' of police. And you are beating the person who oppose your activity of liquor, you are compelling to bring stock of liquor to the motor vehicles like auto rickshaw and upon denial to do so, you threat to kill him by Rampuri knife. Your customers who are drunken are teasing to the women passing from there, and if anyone oppose or request not to do so, your threats showing Rampuri knife to kill to the innocent persons and an atmosphere of danger and violence is spread over because of your such offensive activities and as you are doing acts which are obstructive in maintaining public administration. You are an obstruction in maintaining public administration.

You are an obstruction in maintaining public administration in view of the fact and result of your abovestated anti-social activities, and fact of such instances are also stated by the peace-loving people doing business in the above area, copies of their statements are given to you herewith.

As your offensive activities are obstructive in public administration you were detained under NASA 1980 by this office order No. PCB/DTN/NSA/37/85 dated May 23, 1985 and were released from detention on June 28, 1985.

And your offensive activities are obstructive to the maintenance to public administration that you were detained under PASA Act, 1985 by this office order No. PCB/DTN/PASA/36/86 dated September 26, 1986, as you have filed writ petition in the Honourable Gujarat High Court against this order the Honourable High Court has on June 25, 1987 passed an order to release you from detention.

Accordingly, looking to the overall fact, I am satisfied that you are prohibited bootlegger and known a headstrong and angry person, and an atmosphere of fear and violence is spread over in residents of the said locality because of your above anti-social activities, such activities cannot be refrained by taking steps under the common law.

4. The affidavit of reply affirmed by Mr S. N. Sinha, Commissioner of Police, Ahmedabad city has been filed on December 7, 1988. In paragraph 4, it has been stated that in fact the petitioner belongs to the gang of Abdul Latif and has not at all been falsely prosecuted in any case, it has also been submitted that the petitioner was not good and was involved in activities which affect the society adversely. In paragraph 9 of the said affidavit it has been denied that the grounds are not relevant for the purpose and the present detention order has been passed totally on different and fresh grounds. It has also been submitted therein that it is absolutely wrong to say that the earlier two orders passed against the petitioner were illegal in any manner. Out of the two detention orders, order of 1985 was

passed under the National Security Act in view of the fact of public riots in the Ahmedabad city and order of 1986 was passed on the ground of the petitioner being bootlegger and dangerous person on account of pendency of certain prosecution and both of which were passed by his predecessor and therefore, the said orders have nothing to do with the present orders. It has been further submitted that it is absolutely wrong to say that the sponsoring authority has not submitted the earlier order of release of the petitioner by the Board and the Gujarat High Court. The grounds of detention make it abundantly clear that this fact was clearly considered and thereafter the detention order has been passed and therefore, there is no substance in the contention that the decision of detention would have been different if the earlier orders of release would have been placed before him.

5. The most important question that posed itself for consideration in this case is whether the detaining authority while considering the fresh facts disclosed in the grounds of detention has taken into consideration the earlier two detention orders - one of 1985 under the National Security Act and the other of 1986 under the PASA Act in forming his subjective satisfaction that the detenu in spite of the passing of the earlier two detention orders has been persistently indulging in his anti-social activities and as such in preventing such criminal activities which posed a threat to the maintenance of public order the impugned order of detention has been made by him. It is now well settled by the decisions of this Court while considering the scope of Section 15 of PASA Act that the modification and revocation detention order by the State Government shall not bar making another detention order on fresh facts when the period of detention has come to an end either by revocation or by expiry of the period of detention.

6. Reference may be made in this connection to the decision of this Court in Abdul Latif Abdul Waheb Sheikh v. B. K. Jha ((1987) 2 SCC 22) and in Chhagan Bhagwan Kahar v. N. L. Kalna ((1989) 2 SCC 318 : JT 1989 (1) SC 572). It is therefore, clear that an order of detention cannot be made after considering the previous grounds of detention when the same had been quashed by the court, and if such previous grounds of detention are taken into consideration while forming the subjective satisfaction by the detaining authority in making a detention order the order of detention will be vitiated. It is of no consequence if the further fresh facts disclosed in the grounds of the impugned detention order have been considered.

7. In the present case, admittedly in the grounds of detention specific reference has been made to the earlier two orders of detention made in 1985 and 1986 against the petitioner. It is also evident that in the schedule of documents annexed to the grounds of detention not only the copies of the order of detention but also of the grounds of detention in the earlier detention cases have been given to the petitioner. It also appears from the statements made in the grounds of detention that the detaining authority took into consideration the previous grounds of detention as well as the orders made therein even though the same were nullified by the High Court as well as by Advisory Body, presumably, for the purpose of showing that the detenu in spite of those earlier orders of detention was continuing in his bootlegging activities. It has been tried to be contended on behalf of the detaining authority that though the earlier two detention orders have been mentioned in the grounds of detention and the copy of the orders passed in the previous detention cases as well as the grounds of detention were supplied to the detenu yet these were not at all considered by him in forming subjective satisfaction for clamping the order of detention. This submission cannot be sustained in view of the statements made in the grounds of detention.

8. The other grounds regarding the vagueness of the averments made in the grounds about the petitioner indulging in criminal activities apart from the five criminal cases lodged under the Prohibition Act and mentioned in the grounds of detention do not satisfy the requirements envisaged

in Section 3(1) of the PASA Act inasmuch as the said five specific criminal cases have no connection with the maintenance of public order. The aforesaid criminal activity does not appear to have disturbed the even tempo of life of the people of Ahmedabad city or of the particular locality. Furthermore the averments that have been made in the grounds are :

Accordingly, upon careful perusal of complaint and papers enclosed with the proposal it appears that you are a prohibition bootlegger, doing illegal activity of selling English and Deshi liquor. You and your companions are bearing and showing deadly weapons like Rampuri knife to the innocent persons passing through the said locality on the premise of being 'Batmidar' of police. And you are beating innocent persons who oppose your activity of liquor etc.

These statements are vague and without any particulars as to what place or when and to whom the detenu threatened with Rampuri knife and whom he has alleged to have beaten. These vague averments made in the grounds of detention hereinbefore are bad inasmuch as the detenu could not make an effective representation against the impugned order of detention. As such the detention order is illegal and bad. It is pertinent to refer to the decision of this Court in the case of Abdul Razak Nanekhan Pathan v. Police Commissioner, Ahmedabad (judgment of which has been pronounced today) on this score. It is not necessary to consider and decide other question raised in this writ petition.

9. For the reasons aforesaid, we allow the writ petition and set aside the impugned order of detention made against the petitioner. We direct the respondents to set free the petitioner forthwith.

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