

Ramesh

Vs

State of Gujarat and Others

Writ Petition (Criminal) No. 256 of 1989

(M. M. Dutt, S. R. Pandian JJ)

04.08.1989

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. By this writ petition under Article 32 of the Constitution of India, the petitioner who is the son of the detenu, Bhogilal Manilal Parmar challenges the legality and validity of the order of detention dated February 27, 1989 passed against the detenu by the detaining authority (the Commissioner of Police, Vadodara city) in exercise of the powers conferred by sub-section (2) 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 detenu from acting in any manner prejudicial to the maintenance of public order in the area of Vadodara city. For reaching the subjective satisfaction as to the necessity of making this order on the basis that the detenu is a 'bootlegger' within the meaning of Section 2(b) of the Act and that the activities of the detenu were prejudicial to the maintenance of public order, the detaining authority has relied upon four criminal cases in which the detenu is said to have been involved and the statements of four witnesses showing that the detenu along with a band of his associates armed with the weapons has been unleashing terror thereby creating an atmosphere of insecurity in the area of Vadodara city which activities of the detenu adversely affected the maintenance of public order.

2. The main thrust of the arguments advanced by Mr. P. H. Parekh, learned counsel for the petitioner is two folds :

(1) Relying on the decision of this Court in Chhagan Bhagwan Kahar v. N. L. Kalna it has been submitted that this order of detention under challenge is vitiated on the ground that the detaining authority has taken into consideration some of the grounds of an earlier detention order passed against the detenu on July 1, 1987 under the provisions of the Act drawing his requisite subjective satisfaction notwithstanding that the earlier detention had been quashed by the High Court of Gujarat by its order dated April 4, 1988.

(2) On the strength of the decision in Dharamdas Shamlal Agarwal v. Police Commissioner ((1989) 2 SCC 370 : 1989 SCC (Cri) 378 : (1989)1 JT 580) it has been urged that the impugned order of detention suffers from the vice of non-application of mind of the detaining authority., rendering the order of detention invalid.

3. For evaluating and appreciating the above two contentions we shall now reproduce the list of

cases as shown in the table in the grounds of detention which have been considered by the detaining authority for drawing his subjective satisfaction :

#-----	S.No.	Police Station.	Date & Date & Place of Goods seized	Disposal No. in register	time of time of offence of case of offences	offence arrest of acc- used-----
-----1.	Sayajiganj.	May 7, May 16,	Near gate Box of Com-	918/86, Pro-	1986	1986 of Priya foreign mitted hibition Act, 23 hrs. 14.30 Lakshmi liquor June 26, Section 67(1)A, hrs. Mill from bottle 1987 65(a), 83 the house 203 in in occupa- number tion value Rs. 2,92,3202. Sayajiganj. June July - do - Foreign Com- 357/87, Pro- 18, 12, liquor mitted hibition Act, 1987 1987 bottle October Section 66(b), 21.25 10 hrs 306 in 9, 1987 65(a), (f), hrs. number 116, 81 value Rs. 33,6353. Sayajiganj. July July Near FCI English PI 527/88, Pro- 16, 22, godown, liquor, hibition Act, 1988 1988 Chawl of bottles Section 66(1) 15.35 11 hrs. Dr. Chha- 348 in (b), 65(e), hrs. ganlal number 81 Chawl, Value Rs. Room 43,500 No. 36831. Sayajiganj. October Appeared In the Box con- PI 765/88, Pro- 30, in Court com- taining hibition Act, 1988 and got pound of 159 bottles Section 66(1) hrs. released Priya of liquor (b), 65(e) on bail Lakshmi in Tempo 80, 81, 83 on Feb- Mill No. GQO ruary 2, 4557. 1989 Truck No. PCK 565 and Scooter No. GJD 1361 valu- ed togeth- er at Rs. 7,45,000. Out of total seized bott- les, bottles of value of Rs. 344 re- turned.-----###

4. According to the learned counsel for the petitioner the then Commissioner of Police, Vadodara city passed an order of detention dated July 1, 1987 under Section 3(2) of the Act against this detenu in which the first two criminal cases, mentioned under Serial Nos. 1 and 2 of the above table, formed the basic materials along with others for reaching the subjective satisfaction and the said earlier detention order was quashed by the Gujarat High Court by its judgment April 4, 1988 and therefore the subjective satisfaction drawn by the detaining authority in the present case placing reliance on the same materials of the earlier case, though with some more additional materials vitiates the present detention order. In support of this contention, a copy of the present detention order. is filed in addition to the specific averment in the rejoinder filed by the petitioner, stating that the detaining authority has considered the basic materials of the earlier detention order the had been quashed and as such this impugned order is liable to be set aside in the light of the decision of Chhagan Bhagwan Kahar case ((1989) 2 SCC 318 : 1989 SCC (Cri) 367 : (1989) 1 JT 572).

5. In this connection, it is represented by Mr. Parekh that a copy of the rejoinder has been served on the learned counsel for the respondent much earlier to the hearing of this writ petition. Be that as it may, the respondents have not filed any counter to the rejoinder either denying the averments or affording any explanation.

6. On going through the earlier order of detention vis-a-vis the above table, we find that the cases mentioned under S. Nos. 1 and 2 were the parts of the basic materials in the earlier order of detention passed on July 1, 1987.

7. Mrs. Wahi, learned counsel appearing on behalf of the respondents strongly opposed the above argument by drawing our attention to paragraph 4 of the grounds of detention reading :

"You were detained under the PASA Act with a view to prevent your anti-social activities of bootlegging by the office order dated July 2, 1987 bearing No.

PCB/PASA/Det/9/87 and you were sent to Vadodara Central Jail. You filed a writ petition being Special Criminal Application No. 849 of 1987 against that detention order before the Hon'ble Gujarat High Court. The writ petition was disposed of and the Hon'ble High Court set you at liberty on April 4, 1988 on technical grounds. Even after your release from that detention you have continued your anti-social activities and are involved in the two offences under the Bombay Prohibition Act. Moreover so, as stated by the witness you are involved in two incidents."

8. According to her, the above statement clearly spells out that the criminal cases shown under S. Nos. 1 and 2 of the table were mentioned in the present grounds of detention only for a limited purposes of showing the antecedents of the detenu and nothing more, and hence the detenu cannot avail of the ratio, laid down in Chhagan Bhagwan Kahar case ((1989) 2 SCC 318 : 1989 SCC (Cri) 367 : (1989) 1 JT 572) in which the detaining authority has himself admitted in his counter that he took into consideration materials which were the subject matter of an earlier detention order.

9. Resisting the above submission, Mr. Parekh pointed out certain portions of the grounds of detention reading ".. that the grounds of order of detention made against you are as under" (which is in the preamble) and "you do not have any valid licence to keep this English liquor in your possession and sell it and you are involved in four offenses in all between 1986 and 1988 under the Bombay Prohibition Act. Two of them are pending in court and two are under police investigation" (vide paragraph 1) and a relevant portion in paragraph 5 reading : "Taking carefully into consideration the aforesaid evidence against you I am satisfied from the evidence mentioned in para 1 that you keep the stock of English liquor in your possession and carry on business liquor and you are known prohibition bootlegger" and strenuously contended that the above averments in the grounds of detention unambiguously show that the detaining authority has considered all the four criminal cases as basic materials for reaching his subjective satisfaction and the arguments of the learned counsel of the respondents that the two criminal cases as S. Nos. 1 and 2 are mentioned only for showing the antecedents of the detenu has to be rejected as devoid of any merit.

10. On a careful scrutiny of the grounds of detention, we unreservedly hold that the detaining authority has taken into consideration the two criminal cases mentioned under S. Nos. 1 and 2 of the table which were the materials in the earlier order of detention that had been quashed and that it cannot be said that those two cases are mentioned only for a limited purpose of showing the antecedents of the detenu.

11. In view of the above finding, we hold that the ratio laid down in Chhagan Bhagwan Kahar case (1989) 2 SCC 318 : 1989 SCC (Cri) 367 : (1989) 1 JT 572) will squarely apply to the facts of the present case and the impugned order has become liable to be quashed.

12. We shall now pass on to the second contention. It has been urged on behalf of the petitioner that the criminal case under S. No. 2 of the table namely Crime No. 357/87 of Sayajiganj Police Station registered under the provisions of Prohibition Act is stated to be pending whilst in fact the accused (detenu) has already been acquitted on August 31, 1988 i.e. earlier to the passing of the impugned order and that the fact that the accused has been acquitted in that case either has been withheld or suppressed by the sponsoring authority. According to the learned counsel for the petitioner, had this material fact of acquittal been placed before the detaining authority it might have influenced the mind of the detaining authority one way or the other on the question whether or not to make the detention order.

13. As rightly submitted by Mr. Parekh, the withholding of the vital fact that the detenu has been acquitted in that criminal case, resulting in the non-application of the mind of the detaining authority to the said fact vitiates the impugned order as ruled in Dharamdas Shamlal Agarwal v. Police Commissioner ((1989) 2 SCC 370 : 1989 SCC (Cri) 378 : (1989) 1 JT 580).

14. In the result, for the aforementioned reasons, we hold that the detention order is liable to be set aside on both the grounds. Accordingly, the writ petition is allowed and the order of detention is quashed. The detenu is directed to be set at liberty forthwith.

</html