Ranubhai Bhikhabhai Bharwad (Vekaria) vs State Of Gujarat on 14 March, 2000

Equivalent citations: (2000)3GLR816

JUDGMENT

M.R. Calla, J.

1. This Special Civil Application is directed against the order dated 30th August 1999 passed by the Police Commissioner, Vadodara City, whereby in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985, the petitioner has been ordered to be detained. By yet another order dated 30th August 199, the petitioner was committed to Porbandar Special Jail, Porbandar. The grounds of detention have also been enclosed with the detention order along with other papers.

2. The case has a history of litigation of civil as well as criminal nature over land disputes between the petitioner on one side and the respondent no.4, namely, Mr. Jayesh Dave on the other side. The petitioner has come with the case that the land bearing Survey No.33 of village Akota admeasuring 14 lakh sq. ft. belongs to Hindustan Earth Movers (Pvt.) Ltd., a Company registered at Bombay. This Company was registered and incorporated by M/s. Pashabhai Patel and others. It is alleged that the said Company manufactures Tractors and earth moving equipments. This Company became a sick Company and therefore, several disputes arose in respect of the financial dealings of the said Company. It is alleged that the Hindustan Earth Movers (Pvt.) Ltd.. raised the loan from Bank of Baroda and defaulted in the repayment of the same. The Bank of Baroda therefore, failed a suit for recovery of the loan in the Bombay High Court in its original jurisdiction. The suit was decreed and, therefore, the Bank of Baroda moved the Honourable High Court of Bombay for execution of the decree and thereupon the Court receiver was appointed and the possession of the land in question was taken over by the Court receiver. The Director of Hindustan Earth Movers (Pvt.) Ltd. negotiated with the present petitioner and on 5th January 1996, an agreement to sell was sought to be executed. However, the said agreement could not be fully executed and thereafter a tripartite agreement was executed by and between the petitioner and one Mr. Lalit Mohanbhai Patel and the Hindustan Earth Movers (Pvt.) Ltd. on 1st November 1996. It has been further stated that after the execution of the tripartite agreement, a private treaty was recorded between Mr. Lalit Patel, Bank of Baroda and Hindustan Earth Movers (Pvt.) Ltd. which was placed before the Bombay High Court for its approval and as per the order passed by the High Court of Bombay on November 29, 1996, Mr. Lalit Patel was to deposit Rs.1 crore with the receiver within 15 days. However, the said amount could not be deposited with the Court receiver in time as directed by the Bombay High Court, but said Mr. Lalit Patel deposited Rs.1 crore with the Court receiver on June 9, 1997 and submitted an application before the Bombay High Court for condonation of delay in making the payment of the deposit. The case of the petitioner is that at this stage, respondent no.4 namely, Jayesh Dave

intervened in the process and settled the dispute between Bank of Baroda and the Hindustan Earth Movers (Pvt.) Ltd. The Bank of Baroda then approached the Bombay High Court for withdrawal of the suit. The withdrawal of the said suit was permitted by the Bombay High Court conditionally, i.e. keeping the right in respect of the aforesaid transaction intact and granted permission to Mr. Lalit Patel to prosecute his rights before the appropriate forum. In this background said Mr. Lalit Patel filed Special Civil Suit No.692/97 in the Court of Civil Judge, Senior Division , Baroda for specific performance against the Hindustan Earth Movers (Pvt.) Ltd. and others. In the said suit, Mr. Lalit Patel submitted an application for interim relief at Exh.5. The said application filed by Mr. Lalit Patel was dismissed by learned Civil Judge, Senior Division, Baroda, by his order dated 5th March 1998. Aggrieved from this order passed by the Civil Judge, Senior Division, Baroda, Mr. Lalit Patel preferred an Appeal from Order No.141 of 1998 in this Court and the said Appeal from Order was dismissed by this Court vide order dated 4th May 1998. Said Mr. Lalit Patel preferred an Special Leave Petition being SLP No. 17187 of 1998 before the Supreme Court of India. This SLP was disposed of by the Supreme Court on 19th July 1998 observing that the petitioner of this SLP if so desires may prefer a review petition before the High Court. The petitioner has stated that as per his information, such a review petition preferred by Mr. Lalit Patel is still pending. The petitioner has alleged that on account of this litigation and feeling that the suit filed my Mr. Lalit Patel may be decreed and the sale in favour of the respondent no.4 may be declared to be illegal by the Court, he got panicky and started administering threats not only to the petitioner, but also to Mr. Lalit Patel and his family members. It has been then stated that when these threats did not work, the respondent no.4 threatened one Mr. Upendra Patel, the uncle of Mr. Lalit Patel and Mr. Lalit Patel in the Court on 5th February 1999 through one Mr. Arvind Jani in the Court premises itself. Mr. Upendra Patel and Mr. Lalit Patel were informed that if the cases are not withdrawn by the end of February, 1999, Mr. Upendra Patel will be killed. It is the say of the petitioner that the threats administered by respondent no.4 was executed on February 10, 1999. In fact, now from this date, the civil litigation as aforesaid takes a turn to the criminal litigation between the parties.

3. It is stated that Mr. Upendra Patel left his house with his friend at about 10.00 a.m. on February 10, 1999 and he was shot from point blank range by one unknown assailant who was guided by Mr. Arvind Jani. The bullet fired from the country made revolver pierced the face of Mr. Upendra Patel and landed on the shoulder of Mr. Pathan, the driver of the Car. The FIR was lodged by Mr. Ashok Patel, the nephew of Mr. Upendra Patel in Sayaji Ganj Police Station. The same was recorded as CR No.I-37/99. As a result of this shot, the upper jaws of Mr. Upendra Patel received a fractured injury as the bullet travelled in the straight direction and entered from the left cheek on the upper jaw and travelled in the straight direction coming out from the right jaw and landed on the shoulder of the driver. The injured persons were admitted in the hospital. A grievance has been raised that the investigating agency did not make any attempt to arrest the accused persons named in the FIR. Mr. Jayesh Dave being one of the accused named in the Fir, moved an application for his anticipatory bail which was rejected by the Sessions Court. It is alleged that at this juncture, Mr. Upendra Patel who was in the hospital was given a forcible discharge at the instance of respondent no.3 namely, Mr. Yogesh Patel, a sitting MLA of the ruling party. The Doctors attending Mr. Upendra Patel were pressurised by respondent no.3 MLA Mr. Yogesh Patel to discharge Mr. Upendra Patel so that it could be pleaded before the High Court that the injured had been discharged from the hospital and the accused may be granted anticipatory bail. It has also been stated that this incident has also been

reported in the newspapers. A copy of the newspaper cutting as it appeared in 'Dhabkar' dated 28th March 1999 has been enclosed with the petition. While the anticipatory bail application moved on behalf of Mr. Jayesh Dave was pending before this Court, he was directed to appear before the I.O. on March 22, 1999 and as directed by the High Court, Mr. Jayesh Dave appeared before the Investigating Officer on March 22, 1999. It is alleged that when Mr. Jayesh Dave appeared before the Investigating Officer on March 22, 1999, Mr. Yogesh Patel made a telephone to the Investigating Officer and instructed him that Mr. Jayesh Dave should not be arrested and the statement of Mr. Dave should be recorded immediately and he should be allowed to leave the police station forthwith. It has also been alleged that Mr. Jayesh Dave used abusive language and threatened the Investigating Officer that the Commissioner was showing leaning towards the Congress Party and since Mr. Dave was the man of RSS, he has been harassed by the police. Whereas the MLA Mr. Yogesh Patel had threatened the Investigating Officer, the Investigating Officer reported the facts to the Commissioner of Police and also made an entry in the Station Diary bearing No.6/99 at 10.45 a.m. on that day, i.e. 22nd March 1999, nay, the said incident had been reported by a secret report bearing no. CP Confidential Outward Letter no.15 of 1999. It has been stated in para 21 of the petition that Mr. Jayesh Dave who is the donor of RSS, has donated a premises admeasuring about 5000 sq. ft. in the scheme named and known as 'Samrajya' which is being developed in the disputed land. It has been further alleged that the office premises as donated by Mr. Jayesh Dave to RSS, i.e. frontal organisation of BJP, i.e. party in power, RSS has publicly facilitated Mr. Jayesh Dave on March 2, 1999 and a newspaper report to that effect had also appeared in the 'Gujarat Samachar' published from Baroda. A copy of the said report published in Gujarat Samachar edition of March 3, 1999 has been enclosed with the petition. It is stated that similar report had also appeared in another newspaper namely, 'Sandesh', in its edition dated March 8, 1999, a copy of which has also been enclosed with the petition. It has been then alleged that since the RSS supports respondent no.4 Mr. Jayesh Dave, respondent no.3 Mr. Yogesh Patel, MLA has no option but to provide all political protection to respondent no.4 and so far, he has succeeded in scuttling the investigation of the offence committed against Mr. Upendra Patel and his driver. The anticipatory bail application moved on behalf of Mr. Jayesh Dave came to be withdrawn on March 26, 1999, but no formal arrest was made till May 20, 1999 though the incident had occurred way back on February 10, 1999. The first arrest was made on May 20, 1999. It is alleged that Mr. Arvind Jani and Mr. Kirtikant Soni were detained for interrogation on May 20, 1999 and were formally arrested on the same day at 11.30 hrs. These persons were produced before the Chief Judicial Magistrate who sent them to the police custody till 25th May 1999. After the remand was over, these persons submitted an application for bail which was granted by the Sessions Judge, at Vadodara. Thereafter, Mr. Jayesh Dave preferred an application for bail after his arrest. Mr. Jayesh Dave and Mr. Himanshu Desai were arrested on May 26, 1999 and were produced before the Magistrate on May 27, 1999 who granted police custody till May 28, 1999. These two persons namely, Mr. Jayesh Dave and Mr. Himanshu Desai moved the Sessions Court for bail after the expiry of the remand and the bail was granted on May 28, 1999. Yet another accused Mr. Rajendra Desai was arrested on 23rd June 1999 and the said accused was ordered to be kept in police custody till June 28, 1999 and Mr. Rajendra Desai moved an application for bail on June 28, 1999 which was granted by the Sessions Judge, Vadodara. According to the petitioner, the accused, namely, Mr. Rohit Shah had yet not been arrested and the unknown assailant was reported to be not traceable, by the police. The investigation officer was under tremendous pressure in view of the political connections of the respondent no.4 with RSS. The

brother of Mr. Upendra Patel namely, Mohanbhai Naranbhai Patel therefore moved an application before the Court being Special Criminal Application No.728 of 1999 praying that the investigation of the aforesaid criminal case be handed over to the CBI since the local police was working under tremendous pressure of respondent no.3, i.e. MLA Mr. Yogesh Patel and the local police had not been able to carry out any fruitful investigation.

4. With the filing of the Special Criminal Application No.728 of 1999 by Mr. Mohanbhai Naranbhai Patel, i.e. brother of Mr. Upendra Patel, according to the petitioner, starts the case for detention of the present petitioner. The said Special Criminal Application seeking transfer of the investigation to the CBI from the local police was filed on 22nd August 1999 and the notice returnable for 31st August 1999 was issued. The notice was served upon the Investigating Officer on or about 26th or 27th August 1999 and on 28th August 1999, the petitioner was arrested for offences under Sec.447 and 114 of IPC by Pani Gate Police Station vide CR No.175 of 1999. He was released on bail on 28th August 1999 itself, but on the same day, he was rearrested immediately by J.P. Road Police Station under Sec.151 of the Code for prevention of breach of peace. He was again released on 29th August 1999 on bail by the Executive Magistrate and on the same day, i.e. 29th August 1999, he was again arrested within the precinct of the Court by the officers of the Pani Gate Police Station under Sec.41(2) of IPC. The petitioner was therefore, kept in police custody on identical grounds on one or other pretext and on 30th August 1999, the impugned detention order had been passed and the petitioner was committed on the same day to the Special Jail, in Porbandar.

5. In the grounds of detention, a reference has been made to three criminal cases registered against the petitioner as under:

> (i) Gorva Police Station M. Case No.28/97 for offences under Sec.504, 506(2), 120(B), 406, 420, 386, 389, and 114 of IPC - In this case, the petitioner is enlarged on bail and the trial is pending.
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> (ii) J.P. Road Police Station Case No.139/98 for offences under Sec.342, 406, 420, 504, 323, 506(2) and 114 of IPC - In this case also, the trial is pending and the petitioner is on bail.
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> (iii) Pani Gate Police Station Case No. 175/99 for offences under Sec.447 and 114 of IPC - In this case also, the investigation is pending, but the petitioner had been bailed out.

While the fact remains that on 30th August 1999 when the detention order was passed, the petitioner was already in custody for the offences under Sec.41(2) of IPC as arrested by the Pani Gate Police Station, the detention order was passed and the detention order is based on the statements given out by the three witnesses on 17th August 1999, 21st August 1999, and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June 1999 and 26th June 1999 respectively. The pendency of the criminal cases as aforesaid read with the statements made by the three witnesses with regard to the incidents as above have been made the basis for the purpose of petitioner's detention and the petitioner has been mentioned as a head strong person within the

meaning of Sec.2(c) of the PASA Act.

6. Challenging the above referred detention order, the present petition was filed in this Court on the next day of the order of the detention i.e. on 31st August 1999 and on 1st September 1999, the Rule was issued with an urgent show cause with regard to the prayer for interim relief as prayed in para 41(B) of the petition and the Rule was made returnable on 15th September 1999. On 15th September 1999, Mr. Yogesh Lakhani filed appearance on behalf of the respondents nos.3 and 4 and requested for time to file the affidavit-in-reply after receiving the necessary instructions. Time was granted to file the reply till 22nd September 1999. On 22nd September 1999, on a joint request of the Advocates, the matter was made to stand over to 24th September 1999 and on 24th September 1999, the matter was again made to stand over to 27th September 1999. On 27th September 1999, the matter was made to stand over to 28th September 1999 on the request of the learned Advocate for the petitioner and on 28th September 1999, it was made to stand over to 4th October 1999. Then it is recorded in the proceedings of 15th October 1999 that the learned Counsel for the petitioner had tendered the written submissions and he was directed to remain present on 18th October 1999 to make the oral submissions and thereafter on 20th October 1999, the learned Asstt. Govt. Pleader Mr. S.J. Dave tendered an affidavit on behalf of the respondent no.2 and the further hearing for interim relief was adjourned to 29th October 1999 and the parties were directed to file affidavit if they so desire on 25th October 1999 and the matter was posted for hearing for interim relief on 27th October 19099.

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> On 27th October 1999, the matter was made to stand over to 29th October 1999 and on 29th October 1999, the prayer for interim relief was rejected with the liberty to the petitioner to move for expeditious hearing of the main Special Civil Application and on such request, the matter shall be listed for expedited hearing. On 14th December 1999, the case was made to stand over to 20th December 1999 and when the matter came up before the Court on 20th December 1999, the learned Asstt. Govt. Pleader sought time by saying that the Government was considering to challenge the order of the Court passed on 29th October 1999 before the Division Bench by way of preferring Letters Patent Appeal. On 20th December 1999, time was granted upto 27th December 1999 for filing the Letters Patent Appeal and the case was adjourned to 27th December 1999. Yet, the proceedings recorded on 28th October 1999 show that further time was granted as it was proposed to challenge the order dated 29th October 1999 by way of Letters Patent Appeal and that the appeal shall be filed on the next day, the case was therefore, adjourned to 30th December 1999. On 30th December 1999, the matter was made to stand over to 10th January 2000 and on 13th January 2000, it was made to stand over to 18th January 2000. On 18th January 2000, it was recorded that the Letters Patent Appeal had been filed by the State against the order dated 29th October 1999, but no orders had been passed by the Division Bench and therefore, it was ordered that as no stay order against the order dated 29th October 1999 is obtained by the respondents, the matter shall proceed for final hearing on 25th January 2000. The Letters Patent Appeal was

dismissed by the Division Bench on 21st February 2000. It is only after the dismissal of this Letters Patent Appeal that the matter could proceed further as could be seen from the proceedings of 25th February 2000, 29th February 2000, 3rd March 2000, 9th March 2000, 10th March 2000 and 14th March 2000.

7. In the form of pleadings, besides the petition and the documents etc. enclosed therewith, there is an affidavit-in-reply filed by one Shri J. Mahapatra, Commissioner of Police, Vadodara City dated 22nd September 1999 and yet another affidavit-in-reply filed by one Shri J.R. Rajput, Under Secretary to the Govt. of Gujarat, Home Department (Special), dated 2nd March 2000. On behalf of the petitioner, the first contention which has been raised by Mr. Bhatt is that the grounds of detention did not disclose any such material which can be said to be germane or relevant so as to take the petitioner as a dangerous person under Sec.2(c) of the Act. It has been contended that as per the grounds of detention, there are three criminal cases registered against the petitioner out of which one case is of 1997 and the other one is of 1998. The only case registered of 1999 is the case for the offence under Sec.447 and 114 of IPC and on the basis of these three cases, it cannot be said that the petitioner is a habitual offender. A pointed reference has also been made that these registered cases could not form the basis for the purpose of taking the petitioner as dangerous person under Sec.2(c) of the Act. Regarding the statements made by the three witnesses about the unregistered cases pertaining to the incidents dated 10th July 1999, 13th June 1999 and 26th June 1999, it was submitted by the learned Counsel for the petitioner that all these statements have been recorded between the period from 17th August 1999 to 25th August 1999 with regard to the alleged incidents of June and July 1999 and all these statements were verified on 29th August 1999, i.e. a day before the issuance of the detention order and as per the order passed by the detaining authority, the provisions of Sec.9(2) of the Act have also been invoked. The contention is that there was no material which can be said to be germane to the breach of public order for the purpose of passing the detention order and to record the subjective satisfaction and it has also been submitted that such subjective satisfaction of the detaining authority has been recorded on the basis of extraneous material, extraneous factors and extraneous considerations and in a shorter span, the detaining authority had no time at its disposal to apply its mind before passing the order on 30th August 1999 and the verification of the statements of the witnesses about the unregistered cases cannot be said to be any verification in the eye of law and for the purpose of invoking the provisions of Sec.9(2) of the Act. Learned Counsel for the petitioner has placed reliance on a decision of the Supreme Court in the case of Kanuji S. Zala v. State of Gujarat and ors., reported in (1999) 4 SCC 514, rendered by a Bench of two Judges of the Supreme Court. The Supreme Court has observed that what is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act and that it is also well settled that whether the material was sufficient or not is not for the courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. In the facts of the case before the Supreme Court, the Supreme Court observed that in view of the specific mention made by the detaining authority in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself was sufficient to amount to affecting adversely the public order as defined by the Act. The case before the Supreme Court was a case of a bootlegger and his illegal activities of selling liquor, the consumption of which by the people in the locality had been

found to be harmful to the health. The harm to the public health as such was considered to be a relevant ground for the purpose of prejudice to the public order. The case at hand before this Court is with regard to Sec.2(c) and I find that except for the purpose of principle that there must be credible material before the detaining authority to draw a reasonable inference with regard to the adverse effect on the maintenance of public order, there is nothing in this case which can be said to be of any help to the petitioner. So far as the principle that there must be credible material before the detaining authority to form the basis is well settled and we have to see as to whether in the facts of the present case, there was any credible material before the detaining authority to draw a reasonable inference to arrive at a genuine satisfaction that the petitioner had conducted himself in such a manner so as to render the public order in peril and so as to be a menace against the society affecting the tempo of the society as a whole and these are the aspects to be taken into consideration on the facts of the present case. In this regard, reliance has been placed by the learned Asstt. Govt. Pleader on the decision of the Supreme Court in the case of Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat and ors. reported in 1999 (5) SCC 613. While dealing with the question of public order and on the question of taking the detenu to be dangerous person within the meaning of Sec.2(c) of the Act, the Supreme Court has held in this case that it depends upon the degree of disturbance and its impact on even tempo of life of the society or people. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not, the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of the society. Whereas Sec.2(c) of the Act defines a dangerous person, a person who either by himself or as a member or leader of a gang, during the period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI and XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959, the Supreme Court in the aforesaid case of Amanulla Khan Kudeatalla Khan Pathan (supra) has observed as to what is the meaning of the expression, 'habitually' and it has been laid down that the expression 'habitually' would obviously mean repeatedly or persistently. It supplies the threat of continuity of the activities. In the case of Rajendra Bachubhai Rathod v. Commissioner of Police, reported in 1997 (2) GCD 217, in para 16 of the judgment, this Court had held that the touch stone to test the breach of public order or the activities prejudicial to it, is the nature of anti social activities exceeding the breach of law and order so as to cross the limits of criminal and unlawful activities against an individual or individuals, to militate against the public in general and community or society as a whole, adversely affecting the even tempo of the society, posing a threat to the very existence and normal and routine life of the people at large, putting the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law. If these are the tests to be applied to the question of public order, we have to see as to whether in the facts of the present case, any material which can be said to be relevant to the breach of considerations for the public order existed or not and whether the petitioner can be taken to be a dangerous person under Sec.2(2) of the Act. The narration of the facts of the case as have been given out in the earlier part of the order goes to show that there were two rival groups which were interested in a particular land and in that regard, there was a civil litigation which took the turn to the criminal litigation. No doubt, the reference has been made to two criminal cases against the petitioner in the year 1997-98, but in fact it appears from the facts of

this case that what has precipitated the petitioner's detention is the present dispute over the land which was initially a civil dispute and which later on took the shape of the criminal litigation in which his partner Mr. Upendra Patel was injured. The activities have taken place with regard to the petitioner's arrest, release on bail, re-arrest, again release on bail and on two occasions his arrest under Sec.151 of Cr.PC and for the offence under Sec.41(2) of IPC. The sequence of arrests started on 28th August 1999 and the detention order was passed on 30th August 1999 taking into consideration the criminal cases registered against the petitioner, one each in the year 1997, 1998 and 1999. The last case to which the reference has been made in the grounds of detention is about Case No.175 of 1999 under Sec.447 and 114 of IPC dated 28th August 1999. Any offence under IPC other than the offences under Chapter 16 and 17 are excluded from the necessary ingredients of the 'dangerous person' as defined in Sec.2(c) of the Act and therefore, the arrests which were made under Sec.151 of Cr.PC for breach of peace for the offence under Sec.41(2) of IPC and for offence under Sec.114 of IPC are not relevant and on the basis of these three registered criminal cases as are mentioned in the detention order, it is difficult to find that these cases furnished a material which could be said to be relevant for the purpose of breach of public order or that on account of these three criminal cases, the petitioner's activities had crossed the limits of the breach of the law and order so as to make out a case of breach of public order and militate against the public in general and community or the society as a whole. It is not possible to hold in the facts of the present case that the activities of the petitioner with reference to these three criminal cases had affected the even tempo of the society, posing a threat to the very existence of the normal and routine life of the people at large or that on the basis of these three criminal cases, the petitioner had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law.

8. Now, from the statements of three witnesses about the unregistered cases, we find that all these three statements have been recorded in a short span of about 8 days with regard to three incidents occurred in between 13th June 1999 to 10th July 1999 and all these statements have been verified on 29th August 1999, i.e. a day before the passing of the detention order. No doubt, the witnesses have deposed against the anti social activities of the petitioner, the stress has been laid by the learned Counsel for the petitioner on the ground that these three statements were recorded on 29th August 1999 itself and therefore, before passing the order of detention on 30th August 1999, the detaining authority did not have any sufficient time so as to apply its mind on the whole material and to arrive at the subjective satisfaction that the petitioner's detention was warranted and it has been submitted that there was no verification in the eye of law for the purpose of invoking the privilege of Section 9(2) of the Act. It has also been submitted that the detaining authority did not make any independent inquiry or verification so as to verify the allegations as were levelled by the witnesses in the statements. Merely because the witnesses were summoned and it is recorded that he had made such statement, that does not mean verification of the statements. What is to be verified is the veracity of the allegations levelled in such cases and with regard to a particular incident, it has to be verified. It is only after following such a process that the detaining authority can come to a subjective satisfaction about the correctness of the incident and to hold that all the witnesses were genuine and that the privilege under Sec.9(2) was required to be taken and that it was not in public interest to disclose the names of witnesses who were not coming in open to depose against the petitioner out of fear. It has been submitted that this exercise was not at all undergone in the facts of

the present case and the documents which were enclosed with the grounds of detention and the statements of the witnesses which were enclosed therewith show that all that has been done by the detaining authority is that the witness had admitted that they had made the statements before the concerned Police Inspector. Learned Counsel for the petitioner has submitted that such a recorded endorsement by the detaining authority did not amount to the verification of the statements of the witnesses with regard to the veracity and correctness of the allegations pertaining to the incidents about which the witnesses had deposed before the detaining authority.

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9. Learned Asstt. Govt. Pleader has submitted that in the instant case, the proposal was made by the sponsoring authority on 27th August 1999. However, he is not in a position to say as to on what date it was received by the detaining authority itself. However, one fact is established that the verification of the witnesses has been made by the detaining authority on 29th August 1999 and therefore, it must have reached the detaining authority at least on 29th August 1999 and on the next day, i.e. on 30th August 1999, the detention order has been passed. An identical situation had come up before a Division Bench of this Court in the case of Kalidas C. Kahar v. State of Gujarat and ors. reported in 1993(2) GLR 1659. In para 6 of this decision at page 1662, the contention has been dealt with that the detaining authority had wrongly exercised the power under Sec.9(2) of the PASA Act and by such wrong exercise of powers the detenu's right to make a representation under Art.22(5) of the Constitution of India had been infringed. It was also considered that by statements of the witnesses had been recorded on 15th October 1992 and the said statements had been verified by the Supdt. of Police 'C' Division, Baroda City on 16th October 1992. The proposal in the case was made on 16th October 1992 and the order of detention was passed on 17th October 1992. The Division Bench noticed that it was rather curious that the entire bunch of material was supplied by the sponsoring authority at the time of making the proposal and that has been promptly accepted by the detaining authority and passed the order on the next day itself. It has been further observed that at the time of exercising the privilege under Sec.9(2) of PASA, a balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Art.22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision under Sec.9(2) carved out on the basis of Art.22(5) of the Constitution which provides that nothing in sub-sec.(1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. The Division Bench has held that it is the duty of the detaining authority to strike a balance as stated above, that in public interest the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under Sec.9(2) of the PASA. The Division Bench found in the facts and circumstances of the case before it that the verified statements were

also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under Sec.9(2), as the proposal was made on 16th October 1992 and the order of detention was passed on the following day, i.e. 17th October 1992, nor is there any material to show as to how he examined the necessity of exercising the power under Sec.9(2). Under the circumstances, the Division Bench held that it was a wrong exercise of power under Sec.9(2) which has affected the detenu's right of making an effective representation under Art.22(5) of the Constitution of India and therefore, the continued detention of the detenu is bad and illegal and the impugned detention order was bad and illegal. The facts of the present case are in close proximity to the facts which were considered by the Division Bench in the aforesaid case inasmuch as it has already been pointed out that the statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 221st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June 1999 and 26th June 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed. Therefore, I find that identical fact situation as was obtaining in the case before the Division Bench is there and it is a case of wrong exercise of power under Sec.9(2) of the Act because the detaining authority had no sufficient time for the purpose of verification of the facts which were required for the purpose of satisfaction to invoke privilege under Sec.9(2). Merely because in the facts before the Division Bench the proposal itself was made on 16th October 1992 and the order was passed on 17th October 1992 and in this case the proposal was made on 27th August 1999, the verification of the statements were made by the detaining authority on 29th August 1999 would not make any difference. Such a difference of a day or two here and there is hardly sufficient to inspire confidence that the detaining authority had the sufficient time for the purpose of verification of the facts which are necessary to lead to invoking the privilege under Sec.9(2) of the Act. In this case also the manner in which the verification has been recorded of the statements made by these three witnesses for the purpose of Sec.9(2) shows that the same has been done only as an empty formality inasmuch as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Sec.9(2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power under Sec.9(2) and it is established that in such cases, the wrong exercise of power under Sec.9(2) adversely affects the detenu's right of making an effective representation guaranteed under Art.22(5) of the Constitution of India. This Court quite appreciates in such cases the predicament or the dilemma of the detaining authority in as much as, when the action is taken promptly, it is argued that the action has been taken in a hot haste and if the same is taken after lapse of some time, it is

said that the action is delayed and therefore, the same stands vitiated. In order to combat this argument, the Division Bench has rightly observed that a balance has to be struck in such cases between the public interest and the right of the detenu to make an effective representation. The detaining authority is, therefore, required to act in such a manner that this balance is maintained. Once the materials are placed before the detaining authority with the proposal by the sponsoring authority, it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege under Sec.9(2) of the Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the present case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August 1999, i.e. on the next day to the date on which the materials were considered by the detaining authority. In this regard, learned counsel for the petitioner had made a reference to several unreported decisions of this Court rendered in different cases on different dates, but I find that it is not necessary for me to deal with all those unreported decisions insofar as this point is concerned, the matter stands fully covered by the Division Bench decision to which the reference has been made hereinabove.

10. So far as the argument of the learned counsel for the petitioner that the order has been passed for extraneous considerations and that it is a case of malafides, it may straightway be observed that as have been narrated in the earlier part of the order, the allegations of malafides as have been levelled against the respondent no.3 Mr. Yogesh Patel, sitting MLA of the ruling party and that of respondent no.4, who is said to be a rich donor to the organisation of RSS and pampered, supported and protected by respondent no.3 and that the petitioner has been detained only to pressurise him to drop the litigation going on between the two rival groups and respondent no.4 in particular being protected by respondent no.3, it may be pointed out that respondents nos.3 and 4 have chosen not to file any reply to these allegations and whatever allegations have been levelled against them have remained uncontroverted so far as respondents nos.3 and 4 are concerned. It is of course true that the detaining authority itself has denied these allegations and it has been denied that the order of detention was passed because of the pressure of the respondents nos.3 and 4. It has been further stated that the detention has nothing to do with the incident of attack on Mr. Upendra Patel. In this view of the matter, I do not find sufficient material on record to hold that the detaining authority has acted malafidely at the instance of respondents nos.3 and 4 so as to pass the detention order. Nevertheless, the circumstances attendant and precedent to the passing of the detention order dated 30th August 1999, and the grounds which have been taken for the purpose of detention do indicate that the two criminal cases of 1977 and 1998 failed to clinch the issue with regard to detention. The question of detention has assumed importance only in the month of August 1999 when the two rival groups were at the climax of their contest in the civil litigation and only in the month of August 1999 the statements of the witnesses have been recorded with regard to the incidents of June, 1999 and July 1999 and the only criminal case registered against the petitioner in the year 1999 is Pani Gate Police Station CR No.175/99 in which the petitioner was arrested by the police which relates to some dispute about the land. In fact, all these three criminal cases which are registered against the

petitioner in 1977, 1998 and 1999 are in relation to some land disputes as would appear from page nos.86, 158 and 206 of the paper book forming part of the documents which were supplied to the petitioner and the reading of the contentions and the allegations therein would show that the basic dispute is about some land in all these cases. From such allegations as have been levelled in these three cases and the allegations as have been made against the petitioner with regard to the three incidents narrated by the three witnesses in unregistered cases, it cannot be said that these allegations constitute germane and relevant material or a material which can be said to be germane to the consideration of public order and to make out ingredients for the purpose of dangerous person within the meaning of Sec.2(c) of the Act. In this regard, the number of cases may not be important because even one case may be so grave enough to take a person as a dangerous person and even cases in number more than one may not constitute a case to take the person as a dangerous person. The crux of the matter is that the nature of the allegations as have been levelled against the petitioner cannot be said to be germane for the purpose of taking him as a dangerous person within the meaning of Sec.2(c) of the Act unless and until the material is there to make out a case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the whole social apparatus is in peril at the instance of such person, it cannot be said that he is a dangerous person within the meaning of Sec.2(c) of the Act. It, therefore, appears that it is a case of wholly arbitrary exercise of the power. Neither this Court enters into this question of sufficiency of the material nor to draw any inference about the subjective satisfaction but what is being considered is as to whether the material is germane to constitute the ingredients of a dangerous person against the present detenu and as to whether on the basis of the three criminal cases as referred to above and the three statements, could the petitioner be taken as a dangerous person? In this case, it appears that all these cases are the fall-out of some land disputes between the private parties and similar is the position which appears from the statements with regard to the unregistered cases. In such a situation, these allegations have no direct nexus with the requirements of the dangerous person. Taking the whole conspectus of the events which have taken place in the month of August 1999 in the background of the civil litigation between the two rival groups, the repeated arrests of the petitioner from 28th August 1999 and 29th August 1999 and the detention order as has been passed clearly disclose that the detaining authority has not addressed itself to the considerations which can be said to be germane and relevant for the purpose of taking the petitioner as a dangerous person from the point of view of threat to the public order so as to cross the limits of the law and order and become a menace and threat to the even tempo of the society. They are all private disputes between the individuals and they have not crossed the limits of law and order.

11. Learned Counsel for the petitioner has also addressed arguments on the question that it was a case of non-application of mind and the order was passed on irrelevant evidence and that there was delay in deciding his representations and further that the detaining authority had not considered the question with regard to cancellation of bail under Sec.437(5) and in support of this ground and that no period of detention has been fixed in the detention order; some cases were also cited, but I do not find it necessary to deal with these contentions and the cases because the petition deserves to be allowed on the grounds which have already been discussed and adjudicated in the earlier part of this order.

12. The upshot of the adjudication as aforesaid is that the impugned detention order dated 30th August 1999 passed by the Police Commissioner, Vadodara City, respondent no.2, detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985, cannot be sustained in the eye of law and the same is hereby quashed and set aside. It is directed that the petitioner-detenu Ranubhai Bhikhabhai Bharwad (Vekaria), lodged in Special Jail, Porbandar, shall be released forthwith, if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed and the Rule is made absolute.