Amanulla Khan Kudeatalla Khan Pathan vs State Of Gujarat & Ors on 28 June, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2197, 1999 (9) SCC 157, 1999 AIR SCW 2298, 1999 AIR SCW 2222, 1999 ALLMR(CRI) 2 1182, 1999 CRILR(SC&MP) 348, 1999 (2) UJ (SC) 1017, (1999) 4 JT 93 (SC), 1999 ADSC 6 317, 1999 CRILR(SC MAH GUJ) 348, 1999 (4) JT 93, 1999 (3) SCALE 581, 1999 CRIAPPR(SC) 273, 1999 SCC(CRI) 576, (1999) 4 JT 455 (SC), 1999 UJ(SC) 2 1017, 1999 (7) SRJ 36, 1999 UJ(SC) 2 1191, (1999) 2 EFR 714, (1999) 1 PAT LJR 524, 1999 BRLJ 115, (1999) 2 EASTCRIC 134, (1999) 2 RECCRIR 824, (1999) 3 CURCRIR 58, (1999) 5 SUPREME 334, (1999) 25 ALLCRIR 1486, (1999) 3 SCALE 581, (1999) 39 ALLCRIC 301, (1999) 2 ALLCRILR 453, (1999) 3 CRIMES 53, (1999) SC CR R 465

PETITIONER:
AMANULLA KHAN KUDEATALLA KHAN PATHAN

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT: 28/06/1999

BENCH:
D.P.Wadwa, G.B.Pattanaik

JUDGMENT:

PATTANAIK,J.

Leave granted.

The detenu, who has been detained by the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short PASA) approached the Gujarat High Court for quashing the order of detention dated 13.8.98 in Special Civil Application No. 6896 of 1998. The said application was dismissed by the High Court by its Judgment dated 5.4.99 and the aforesaid order has been assailed in the Special Leave Petition in this court. The detenu has also filed an independent writ petition under Article 32, challenging his detention under several grounds. Both, the Special Leave Petition and the Writ Petition having been heard together are being disposed of by this common Judgment.

The detaining authority on being satisfied from the activities of the detenu that he belongs to a notorious gang and the members of the gang hatched conspiracy to extort money from the people who are engaged in building construction business in the city by putting the people under threat of fear of death, was satisfied that the detenu is a dangerous person within the meaning of Section 2[c] of the Act and the activities of the detenu and his gang members were such that for maintenance of public order it was necessary to detain the detenu and accordingly the order of detention against the detenu was passed. Immediately after the order of detention was passed, the detenu approached the Gujarat High Court as already stated inter alia on the ground that the single activity of the detenu for which CR No. 36/97 under Sections 120-B, 387 and 506(2) IPC had been registered is not sufficient to hold him to be a dangerous person within the meaning of Section 2[c] of the Act and as such the order of detention is vitiated. By the impugned Judgment, the High Court came to the conclusion that the satisfaction of the detaining authority was not based solely on the incident culminating in registration of the criminal case under Sections 120-B, 387 and 506(2) of the Indian Penal Code but also the incidents that happened on 26.7.98 and 2.8.98 about which the two witnesses have stated before the detaining authority and therefore, the satisfaction of the detaining authority, holding the detenu to be a dangerous person cannot be said to be vitiated.

Mr. Anil Kumar Nauriya, the learned counsel appearing for the detenu in this court reiterated the same contention namely that a single incident in which the detenu is alleged to be involved and for which the criminal case had been registered will not be sufficient to hold the detenu to be a dangerous person under Section 2[c] of the Act inasmuch as the expression dangerous person has been defined to be a person who either by himself or as a member or leader of a gang, during a period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. In other words according to the learned counsel unless the activities of the detenu considered by the detaining authority indicate that he has either habitually committed or attempted to commit or abet the commission of offence, cannot be held to be a dangerous person under Section 2[c] of the Act. The expression habitually would obviously mean repeatedly or persistently. It supplies the threat of continuity of the activities and, therefore, as urged by the learned counsel for the petitioner an isolated act would not justify an inference of habitually commission of the activity. In this view of the matter the question that requires adjudication is whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu. If the grounds of detention is examined from the aforesaid stand point, it is crystal clear that apart from the criminal case which had been registered against the detenu for having formed a gang and hatched a conspiracy to extort money from the innocent citizens by threatening them and keeping them under constant fear of death, the two witnesses examined by the detaining authority narrated the incident that happened on 26.7.98 and 2.8.98 in which the detenu was involved and on the first occasion a sum of Rs. 1 lac was demanded and when the person concerned refused, he was dragged and assaulted and on the second occasion a sum of Rs. 50 thousand was demanded and on refusal, the persons were dragged on the road and were beaten on the public road. It is not the grievance of the detenu that the statements of the aforesaid two witnesses had not been appended to the grounds of detention or had not been mentioned in the grounds of detention. In fact the grounds of detention clearly mention

the aforesaid state of affairs and there is no bar for taking these incidents into consideration for the satisfaction of the detaining authority that whether the person is a dangerous person within the ambit of Section 2[c] of the Act. We, therefore, fail to appreciate the first contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a dangerous person is based upon the solitary incidence in respect of which a criminal case has already been registered. In our considered opinion the detaining authority has considered the three different incidents happened on three different dates and not a solitary incidence and, therefore, the test of repeated-ness or continuity of the activity is fully satisfied and the satisfaction of the detaining authority holding the detenu to be a dangerous person is not vitiated in any manner. The contention of the learned counsel for the petitioner therefore stands rejected.

Mr. Anil Kumar, the learned counsel then urged that even if the activities of the detenu were sufficient to hold him to be a dangerous person yet an order of detention can be passed under the Gujarat Act only with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. By virtue of provisions contained in Sub-section (4) of Section 3 of the Act 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. Thus maintenance of public order is sine qua non for passing an order of detention under Section 3 of the Gujarat Act. But in the case in hand the alleged activities of the detenu are all in relation to violation of the normal criminal law and it has got no connection with the maintenance of public order and, therefore, the order of detention is vitiated. We are unable to appreciate this contention of the learned counsel for the detenu inasmuch as even an activity violating an ordinary legal provision may in a given case be a matter of public order. 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. In Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commisioner of Police and Ors. 1995(3) SCC 237, it has been held by this court that in order to bring the activities of a person within the expression of acting in any manner prejudicial to the maintenance of public order, 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 society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of law and order or it amounts to breach of public order. Applying the ratio of the aforesaid decision to the facts of the present case we find that the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and, therefore such activities cannot be said to be a mere disturbance of law and order. In our considered opinion the activities of the detenu are such that the detaining authority was satisfied that such activities amount to disturbance of public order and to prevent such disturbance the order of detention was passed. We, therefore, do not find any substance in the second contention of the learned counsel for the detenu. Mr. Anil Kumar then urged that the Advisory Board having not indicated that the detenu is to be

detained for more than three months, has failed to discharge its constitutional obligation and there has been an infringement of Article 22(5) of the Constitution and in support of the same reliance has been placed on the decision of this court in A.K. Gopalan vs. The State of Madras, 1950 SCR 88 and the decision of this Court in John Martin vs. The State of West Bengal, 1975(3) SCR 211. At the outset it may be stated that the detenu had not made any such grievance in the writ petition that had been filed in the Gujarat High Court. That apart, the opinion of the Advisory Board to the State Government, rejecting the representation of the detenu and expressing its opinion with regard to the existence of sufficient cause for the detention of the detenu is not a part of the record and what is pressed into service by the learned counsel in support of his argument is the mere communication from the Section Officer of the Home Department dated 27th August, 1998, intimating the factum of the rejection of representation by the Advisory Board. Section 11 of the Act is the procedure for making reference to the Advisory Board and Section 12 provides the duties and obligation of the Advisory Board on the basis of materials placed before it. Under Sub-section (2) of Section 12 it is the requirement of law that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the detenu and this opinion of the Advisory Board has been furnished in the present case. We really fail to understand how a contention could be raised that the Advisory Board has failed to discharge its obligation and how the court would be entitled to examine the same without even the copy of the report of the Advisory Board being formed a part of the records of the present proceedings. In view of the counter affidavit filed in the present case that all the provisions have been duly complied with and in the absence of any material to support the arguments advanced by the learned counsel, we do not find any force in the contention raised alleging any infraction of provision of law in the opinion given by the Advisory Board and the said Board in rejecting the representation of the detenu. This contention therefore, is devoid of force.

The next contention raised by the learned counsel for the detenu is that even though the representation was made to the Advisory Board yet the detaining authority were also duty bound to consider the same as the detaining authority also could have revoked the order of detention and non- consideration of the representation by the detaining authority constitute an infraction of Article 22(5) of the Constitution and in support of this contention reliance has been placed on the decision of this Court in 1995(4) SCC 51 Kamleshkumar Ishwardas Patel etc. etc. vs. Union of India & Ors. etc. etc. This contention to us appears to be based upon a mis-conception of the relevant provisions of the Act. Admittedly, the representation in question was made to the Advisory Board and not to the detaining authority. If a representation is made by the detenu to the authorised officer for revoking or modifying the detention order then it would be certainly his constitutional obligation to consider the same and pass appropriate orders thereon and non-consideration would tantamount to violation of Constitutional rights to a detenu under Article 22(5). But if a representation is made to a specified authority and that specified authority in the given case is the State Government and the Advisory Board considers the same and disposes it of, then at that stage the question of the detaining authority considering the said representation even though not addressed to it does not arise. If the Gujarat Prevention of Anti-Social Activities Act, 1985 is analysed it would appear that the legislature has circumscribed the powers of the detaining authority by providing that an order of detention would lapse after 12 days from the passing of the order unless the State Government has within the said period endorsed and ratified the same.

Therefore within the aforesaid period of 12 days, the detaining authority has the power to revocation which he can exercise before the State Government ratifies the same. But once the State Government approves the order of detention then on the same set of circumstances the detaining authority cannot revoke an order of detention. Though if subsequent circumstances change, the detaining authority may have the power of revocation in view of the provisions of the General Clauses Act. But when no representation is made to the detaining authority after the order of detention passed by him is approved by the State Government indicating new set of circumstances requiring the detaining authority to consider his representation, and on the other hand the representation is addressed to the Advisory Board, we see no requirement of law for that representation being also to be disposed of by the detaining authority and such non-disposal would amount to violation of the Constitutional right of the detenu under Article 22(5) of the Constitution. This contention of the learned counsel for the petitioner is devoid of force. That apart, the detenu never raised this question before the High Court making any such allegation. Another ground was raised by the learned counsel in this court to the effect that the grounds of detention no doubt indicated that the activities are such that it cannot be dealt with by Bombay Police Act but no reasons have been given and therefore, it is mere ipse dixit of the detaining authority and on that score the order of detention is vitiated. We are also unable to accept this contention. The satisfaction of the detaining authority on consideration of the activities of the detenu and on forming an opinion that the activities are such which affects the maintenance of public order and as such it is necessary to put the detenu under detention cannot be interfered with by the court of law on mere assertion of the detenu. It is not required to be stated in the grounds of detention as to why the detaining authority has formed the opinion that the activities in question cannot be adequately dealt with under the provisions of Bombay Police Act. We see no infirmity with the order of detention or with the satisfaction arrived at by the detaining authority, requiring the detenu to be detained under the Act on that score. We, therefore, have no hesitation to reject the said submission of the learned counsel for the petitioner. In the aforesaid premises all the contentions raised having failed, the Criminal Appeal by grant of Special leave arising out of the Judgment of Gujarat High Court as well as the Writ Petition filed under Article 32 of the Constitution, fail and are dismissed.