

Gujarat High Court

Harishbhai vs State on 11 May, 2010

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SCA/1278/2010 3/ 3 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 1278 of 2010

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HARISHBHAI
SOMABHAI HIRAGAR (MARWADI) - Petitioner(s)

Versus

STATE
OF GUJARAT & 2 - Respondent(s)

=====

Appearance :
MR
AR SHAIKH for Petitioner(s) : 1,
MS JIRGA JHAVERI AGP for
Respondent(s) : 1, 3,

=====

CORAM

:

HONOURABLE

MR.JUSTICE ANANT S. DAVE

Date
: 11/05/2010

ORAL
ORDER

Heard learned counsel for the parties.

This petition is directed against the order of detention dated 30.11.2009 passed by the respondent No.2 in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the Act") by detaining the lady-detenu as a "bootlegger" as defined under Section 2(b) of the Act.

Learned counsel for the detenu submits that order of detention impugned in this petition deserves to be quashed and set aside on the ground that 3 incidents alleged against the detenu are not of such magnitude and intensity as to have the effect of disturbing the public order so as to pass an order under Section 3(1) of the PASA Act. He has further submitted that the detaining authority has not applied his mind to the vital facts and there was non-application of mind before recording the order of detention. In support of the above contention, the learned counsel has relied upon the following case-laws:

Judgment and order dated 22.8.2000 of the Division Bench of this Court (Coram: M.R. Calla & R.R. Tripathi, JJ.), in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 (Ashok Balabhai Makwana vs. State of Gujarat);

Piyush Kantilal Mehta vs. Commissioner of police, AIR 1989 Supreme Court Om Prakash vs. Commissioner of Police and others, JT 1989 (4) SC 177 Kanuji S. Zala vs. state of Gujrat ando thers, 1999 (2) GLH 415.

Learned AGP for the respondent-State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detenu, indicating that the detenu is in the habit of indulging into activities as defined under Section 2(b) of the Act and, considering the facts of the case, the

detaining authority has rightly passed the order of detention and the detention order deserves to be upheld by this Court.

Having heard learned counsel for the parties and considering the facts and circumstances of the case, it appears that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law inasmuch as the offences alleged in the four FIRs cannot have any bearing on the public order since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detainee cannot be said to be germane for the purpose of bringing the detainee within the meaning of Section 2(b) 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 disturbing the public order at the instance of such person. In view of the ratio laid down by the Hon'ble Supreme Court in the decisions cited by the learned counsel for the petitioner, the Court is of the opinion that the activities of the detainee cannot be said to be dangerous to the maintenance of the public order and at the most fall under the maintenance of "law and order".

In the result, this Special Civil Application is allowed. The impugned order 30.11.2009 of detention passed by respondent No.2 is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(ANANT S. DAVE, J.) *pvv Top