Rajubhai Ranabhai Odedara vs State Of Gujarat on 27 December, 2019

Equivalent citations: AIRONLINE 2019 GUJ 672

Author: Vikram Nath

Bench: Vikram Nath, A.J. Shastri

C/LPA/1644/2019 CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1644 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 17203 of 2014
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In R/LETTERS PATENT APPEAL NO. 1644 of 2019
With
CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2019
In R/LETTERS PATENT APPEAL NO. 1644 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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RAJUBHAI RANABHAI ODEDARA
Versus
STATE OF GUJARAT

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Appearance:
MR BM MANGUKIYA(437) for the Appellant(s) No. 1
MS BELA A PRAJAPATI(1946) for the Appellant(s) No. 1
for the Respondent(s) No. 2,3
MR KRUTIK PARIKH, AGP for the Respondent(s) No. 1
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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 27/12/2019

CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. The present Letters Patent Appeal has been filed assailing the correctness of the judgment and order dated 05.09.2019 passed by the learned Single Judge in Special Civil Application No.17203 of 2014 whereby the writ petition was dismissed with cost of Rs.10,000/-.

2. The present appellant, who was also the original writ petitioner, was facing number of criminal cases as set out in paragraph Nos.5 to 15. Each paragraph contains the details of separate First Information Reports under various provisions of the Indian Penal Code and other offences, for example, under the Prohibition Act and the Bombay Police Act also. The details of each of the case are mentioned hereunder:

Sr. No.	Details of the case	Result of the case
1.	First Information Report for the offences punishable under Sections 452, 504, 323, and 506(2), 330, 114 and 109 of Indian Penal Code registered as CR-I No.212 of 1992 numbered as Criminal Case No.773 of 1993.	Acquitted vide judgment and order dated 31.3.1997
2.	First Information Report for the offence punishable under Section 135 of Bombay Police Act culminated into Criminal Case No.518 of 1997.	Acquitted vide judgment and order dated 10-5-2007
3.	First Information Report for the offence punishable under Sections 302 and 114 of Indian Penal Code and Section 135 of Bombay Police Act culminated	Acquitted vide judgment and order dated 5-

into Criminal 12-2003 Case No.46 of 1997.

4. First Information Report for the offence Released as per punishable under Section 122-C of Bombay provisions of Police Act culminated into Criminal Case Section 360 of No.5232 of 2003. Cr.P.C., 1973 and Section 3 of Probation of Offenders Act.

5. First Information Report for the offence Acquitted vide punishable under Sections 323, 504 and judgment and 506(2) of Indian Penal Code culminated into order dated Criminal Case No.480 of 2003. 10.2.2012

6. First Information Report for the offence Acquitted vide punishable under Sections 323, 504, 506(2) judgment and and 114 of Indian Penal Code read with order dated Section 135 of Bombay Police Act culminated 22.6.2011 into Criminal Case No.6034 of 2007.

7. First Information Report for the offence Acquitted vide punishable under Sections 4 and 5 of judgment and Prevention of Gambling Act culminated into order dated Criminal Case No.6905 of 2007. 22.6.2011

8. First Information Report for the offence Acquitted vide punishable under Sections 323, 504 and 114 judgment and of Indian Penal Code read with Section 135 of order dated Bombay Police Act culminated into Criminal 9.4.2008 Case No.1131 of 2008.

9. First Information Report for the offence Released on punishable under Sections 66(1)(b), 65(E), bail vide order 116-B and 81 of Prohibition Act which is dated 13.1.2013 numbered as C.R-III No.29 of 2013.

10. First Information Report for the offence Released on punishable under Sections 143, 147, 148, 144 bail vide order and 504 of Indian Penal Code and Section dated 13.3.2014 135 of Bombay Police Act numbered as CR-I No.4 of 2014

11. First Information Report for the offence Released on punishable under Sections 143, 147, 148, regular bail vide 149, 365, 307, 323, 504, 506(2) and 201 of order dated 10- Indian Penal Code and Section 135 of Gujarat 11-2014 Police Act numbered as CR-I No.75 of 2014.

3. In paragraph No.2 of the petition, it is stated that the petitioner-proposed detenue is approaching the High Court through his son Lakhan Rajubhai Odedara as the petitioner is already detained in judicial custody in connection with First Information Report being CR-1 No.75 of 2014 under sections 143, 147, 148, 149, 365, 307, 323 and 506(2) of IPC. It is further mentioned in paragraph No.2 that the petitioner is sought to be detained preventively as being a dangerous person in purported exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the 1985 Act") on the strength of three First Information Reports including the one mentioned above, in which the petitioner was already in judicial custody. It would be relevant to mention here that the writ petition was filed in November, 2014. It is also stated that as soon as the petitioner is released from judicial custody in the above- mentioned

criminal case (CR-1 No.75 of 2014), he would immediately be detained under the 1985 Act.

4. The reliefs claimed by means of this petition are reproduced below:-

> "a. Be pleased to admit this petition;
>
> b. Be pleased to issue a writ of mandamus or a writ

in the nature of mandamus and/or any other appropriate writ/s, order/s and/or direction/s and hold and declare that the respondents have no power, authority or competence to pass order of preventive detention against the petitioner in view of the facts set out in the memo of this petition;

c. Be pleased to issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ/s, order/s and/or direction/s and direct the respondents not to issue any order of preventive detention against the petitioner in the light of the facts as set out hereinabove in the memo of this petition; d. Pending admission and final disposal of the present petition, be pleased to restrain the respondents, their agents and servants from arresting the petitioner for preventive detention in connection with the first information reports referred in the memo of this petition; e. Be pleased to pass such other and further orders as may be deemed fit and proper."

5. After reference to all the criminal cases registered against the petitioner in paragraph No.16, it is mentioned that the order of preventive detention is already recorded treating the petitioner to be a dangerous person. It also mentions that there is no incident recorded after the petitioner was arrested in respect of CR-1 No.75 of 2014 and, as such, there was no material with the detaining authority to form an opinion that any of the activities of the petitioner are prejudicial to maintenance of public law and order and public tranquility. The said paragraph further mentions that threat is being extended to the petitioner and his family members that as soon as the petitioner comes out pursuant to the bail granted in CR-I No.75 of 2014, he would be detained under the 1985 Act as a dangerous person, as such, the petitioner is compelled to approach this Court on various grounds. The grounds are set out in paragraph No.17 onwards.

6. District Magistrate, Porbandar filed counter affidavit in December, 2014. Copy of the detention order dated 4th July, 2014 was annexed along with the counter affidavit as Annexure:R-1.

7. The petition has proceeded on the assumption that the preventive detention order proposed to be passed may be quashed. In the aforesaid writ petition, the petitioner was granted interim protection on 15.12.2014 which has continued till 11.04.2018 when the interim relief granted was vacated taking into consideration the conduct of the counsels appearing for the petitioner in not attending the case despite repeated warnings and resorting to filing repeated adjournments, leave notes and sick notes. The order dated 11.04.2018 is reproduced below:-

> "1. Learned advocate for the petitioner seeks some time. The record shows that petitioner is enjoying interim relief in his favour against his proposed detention since 15.12.2014. There was detailed order on 15.11.2017 which reads as under:-

"There is interim relief in favour of the petitioner since 15.12.2014. Repeatedly leave note and sick note has been filed on record. Moreover, though Vakilatnama is signed by two advocates, they have tendency to press for hearing of selective matters based upon signature of two advocates in Vakilatnama even if either of them has filed leave note and sick note. However, in the present case, since interim relief is in their favour, learned advocate for the petitioner re avoiding to proceed further in the matter. Therefore, though learned advocate has requested for time, no further time can be granted and matter requires to be taken up for final hearing. However, since Court time is over, let the matter be listed on tomorrow for further necessary orders when advocates does not remain present after getting interim relief in favour of the petitioner. It is made clear that when any of the advocates is available, then, matter cannot be adjourned only because of their choice. In such case, if nobody appears for the petitioner on tomorrow, then, interim relief may be vacated. It is also made clear that all such orders are available on Internet and, therefore, there is no reason for any of the litigants or their advocates to plead that they are not aware about such situation. List on 16.11.2017."

2. Thereafter, when matter was listed on 16.11.2017, draft amendment was not pressed and on 24.11.2017 and 13.12.2017 following orders were passed by this Court.

Date : 24/11/2017 "Petitioner has submitted one proposed draft amendment, so as to quash and set aside the order dated 04.07.2014. Considering the fact that such order is on July, 2014, respondent wants to verify certain details and may need to file reply. However, it is made clear that petitioner is enjoying interim relief since 2014. Petitioner shall proceed further in the matter, irrespective of any difficulty, considering the fact that after having interim relief in favour of the petitioner such criminal matter, petitioner must keep alternative arrangement for hearing. Therefore, Court may proceed further in absence of learned advocates for the petitioner on next date of hearing. List the matter on 08.12.2017."

Date : 13/12/2017 "It is made clear that petitioner is enjoying interim relief since 2014. Petitioner shall proceed further in the matter, irrespective of any difficulty, considering the fact that after having interim relief in favour of the petitioner such criminal matter, petitioner must keep alternative arrangement for hearing. Therefore, Court may proceed further in absence of learned advocates for the petitioner on next date of hearing. List the matter on 21.12.2017."

3. Thereafter, when matter was taken up for active hearing on 15.2.2018 considering the fact that FIRs based upon which respondent proposed to detain the petitioner was allowed in the year 2013-14, both the sides were directed to verify the status of criminal case initiated in view of such FIRs.

4. Today, learned AGP has disclosed a list of FIRs registered against the petitioner before different police stations. As per such list, petitioner was convicted by trial court pursuant to FIR No.I-96/2003 and though he was acquitted in three other cases in the year 2007 and 2008, after filing this petition in the month of November, 2014, it seems that petitioner has involved himself in

five other cases i.e. I-75/2014, I-37/2015, II-113/2016, I- 112/2016 and III-66/2017. He has further disclosed that cases for all such FIRs are pending before this Court. In view of such disclosure, petitioner is not entitled to interim relief in this petition because when petitioner is directed against proposed detention as back as in December, 2014, this petitioner should not involved himself in any other offence thereafter, but as recorded hereinabove, petitioner is involved in 45 offences even thereafter. Therefore, interim relief needs to be vacated.

5. While dictating such order, learned advocate for the petitioner has requested to pass on the matter. Hence, matter was passed on. However, nobody has appeared even in second call. Hence, interim relief stands vacated forthwith.

6. List the matter on 27.4.2018."

8. It may be recorded here that despite the vacation of the interim order on 11.04.2018, the petitioner was not detained under the 1985 Act. The aforesaid order dated 11.04.2018 also records that during the interim protection granted to the petitioner in the afore-mentioned writ petition, the petitioner has been involved in at least five other cases, the details of which are reproduced below:-

> "The petitioner was convicted by trial court pursuant to FIR No.I-96/2003 and though he was acquitted in three other cases in the year 2007 and 2008, after filing this petition in the month of November, 2014, it seems that petitioner has involved himself in five other cases I.e. I- 75/2014, I-37/2015, II-113/2016, I-112/2016 and III-66/2017."

9. It is also interesting to note that the detention order under Section 3(2) was passed against the petitioner on 04.07.2014 at least four months prior to the filing of the writ petition in November, 2014. But the said detention order was not executed even though, the petitioner was in judicial custody. The Executing Authority has thus made a mockery of the detention order by not executing the same for four months. This aspect would be dealt with at a later stage in greater details.

10. The learned Single Judge by order dated 05.09.2019 dismissed the Special Civil Application (writ petition) and also imposed cost of Rs.10,000/- on the finding that the petitioner had grossly abused the process of law. It is this order which is under challenge in the present L.P.A.

11. We have heard Shri B.M. Mangukiya, learned counsel for the appellant and Shri Krutik Parikh, learned A.G.P. for the State.

12. Shri B.M. Mangukiya, learned counsel for the appellant has assailed the correctness of the impugned order passed by the learned Single Judge on the following grounds:

> (i) Learned Single Judge wrongly recorded that there were 45 cases registered against the appellant and, therefore, the order was vitiated.

(ii) The appellant had disclosed all the criminal cases registered against him in his petition and had also mentioned their status that in most of the cases, he had been acquitted and discharged but, despite the same, the learned Single Judge went on to hold that the petitioner was a dangerous person as defined under Section 2(c) of the 1985 Act and, therefore, the order was liable to be set aside.

(iii) None of the offences alleged against the appellant would constitute to cover the appellant under the definition of a dangerous person and, therefore, the finding to that effect was vitiated in law.

(iv) The detention order was in fact an abuse of power curtailing the liberty of the appellant and thereby violating the fundamental right of the appellant guaranteed under Article 21 of the Constitution of India.

(v) The detention order mentioned only three cases, out of which, two were stale cases and in effect the basis of the detention order was the criminal case of 2014 registered as CR-1 No.75 of 2014 which in no manner would constitute to cover the appellant under the definition of a dangerous person.

(vi) The detention order although passed in July, 2014 was not executed i.e. it was never served upon the appellant till November, 2014, thereafter there was an interim protection provided by the learned Single Judge vide order dated 15.12.2014 and even after stay order was vacated on 11.04.2018, no effort was made by the Executing Agency to detain the appellant till September, 2019 when finally writ petition was dismissed on 05.09.2019 i.e. for a period of more than one year and almost five months. But now there was a imminent threat to the appellant of being detained, thus, the very purpose of passing the detention order was frustrated and now that more than five years have passed, the said detention order has lost its efficacy and, therefore also, deserves to be quashed.

13. On the other hand, Shri Krutik Parikh, learned A.G.P. for the State submitted that there were more than 20 criminal cases registered against the appellant. The details of these cases as per the list provided by the State are given below:

Sr. No.	Details of the case	Result of the case
1.	First Information Report for the offences Not	proved.

punishable under sections 452,504 and 323 of Disposed of on the Indian Penal Code, registered as CR No. 31/3/93 Ist 212/92 at Kamlabaug Police Station.

2. First Information Report for the offences Not proved.

punishable under sections 307 and 324 of Disposed of on Indian Penal Code registered as CR No. Ist 8/9/03 122/94 at Kamlabaug Police Station.

3. First Information Report for the offences Not proved.

punishable under section 135 of the Bombay Disposed of on Police Act registered as CR No. IInd 102/96 at 10/5/07 Kamlabaug Police Station.

4. First Information Report for the offences Not proved.

punishable under sections 302, 114 etc. of Disposed of on Indian Penal Code, registered as CR No. Ist 05/12/03 82/87 at Kamlabaug Police Station.

5. First Information Report for the offences Not proved.

punishable under sections 451, 527, 294(B) of Indian Penal Code, registered as CR No. Ist 105/99 at Kamlabaug Police Station.

6. First Information Report for the offence Proved.

punishable under section 122(C) of the Disposed of on Bombay Police Act, registered as CR No. IInd 03/05/03 40/2000 at Kamlabaug Police Station.

7. First Information Report for the offence Not proved.

punishable under section 12 of the Gambling Disposed of on Act, registered as CR No. IInd 131/2001 at 23/11/13 Kamlabaug Police Station.

8. First Information Report for the offences Not proved.

punishable under sections 323, 506(2) etc. of Disposed of on Indian Penal Code, registered as CR No. IInd 10/02/12 46/03 at Kamlabaug Police Station.

9. First Information Report for the offences Not proved.

punishable under sections 323, 506(2) etc. of Disposed of on Indian Penal Code, registered as CR No. IInd 22/06/12 97/07 at Kamlabaug Police Station.

10. First Information Report for the offences Not proved.

punishable under sections 4 and 5 of the Disposed of on Gambling Act, registered as CR No. IInd 22/06/12 151/07 at Kamlabaug Police Station.

11. First Information Report for the offences Not proved.

punishable under sections 323,504 etc. of Disposed of on Indian Penal Code, registered as CR No. IInd 09/04/08. 39/08 at Kamlabaug Police Station.

12. First Information Report for the offences Not proved.

punishable under sections 302, 365 etc. of Indian Penal Code, registered as CR No. Ist 56/10 at Kamlabaug Police Station.

13. First Information Report for the offences Not proved.

punishable under sections 66(1)(b), 65,116(b), Disposed of on 81 of Prohibition Act, registered as CR No. 12/04/19. IIIrd 29/13 at Kamlabaug Police Station.

14. First Information Report for the offences Pending trial.

punishable under sections 143, 147, 149, 506(2) etc. of Indian Penal Code, registered as CR No. IInd 08/14 at Kamlabaug Police Station.

15. First Information Report for the offences Proved.

punishable under section 185 of Motor Disposed on Vehicles Act, registered as CR No. IInd 97/14 30/10/15. at Kamlabaug Police Station.

16. First Information Report for the offences Pending trial punishable under sections 143, 147, 149, 506(2) etc. of Indian Penal Code, registered as CR No. Ist 75/14 at Kamlabaug Police Station.

17. First Information Report for the offences Pending trial punishable under sections 188, 336 etc. of Indian Penal Code and section 25(1)B etc. of Arms Act, registered as CR No.Ist 37/15 at Kamlabaug Police Station.

18. First Information Report for the offences Pending trial punishable under sections 427, 504, 507 etc. of Indian Penal Code, registered as CR No. IInd 113/16 at Kamlabaug Police Station.

19. First Information Report for the offences Pending trial punishable under sections 324, 323 etc. of Indian Penal Code, registered as CR No. Ist 112/16 at Kamlabaug Police Station.

20. First Information Report for the offences Proved.

punishable under sections 66(1)B and 85 of Disposed of on the Prohibition Act, registered as CR No. IIIrd 22/08/18. 66/17 at Kamlabaug Police Station.

21. First Information Report for the offences -

punishable under sections 506(2), 294 of Indian Penal Code, registered as CR No. IInd 53/2000 at Kamlabaug Police Station.

22. First Information Report for the offences Proved.

punishable under section 283 of Indian Penal Disposed of on Code, registered as CR No. IInd 171/16 at 14/6/16. Jetpur Police Station.

14. Thus, according to Shri Parikh, learned A.G.P. for the State, the detention order was rightly passed and was fully justified and the learned Single Judge rightly dismissed the writ petition. It was next submitted that the appellant having misused the liberty and the interim protection granted to him by committing five more offences after November, 2014, does not deserve any interference or indulgence by this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India. The learned Single Judge rightly dismissed the writ petition and as such this appeal also deserves to be dismissed.

15. Upon a pointed query being put to Shri Parikh as to why the detention order which was passed on 4th July, 2014 was not executed till November, 2014 even though the appellant was in judicial custody in reference to a case which find mentions in the detention order, Shri Parikh had no answer despite time to obtain instructions was granted.

16. Further to another query as to why only three cases were mentioned in the detention order although, as per the State, there were more than a dozen criminal cases registered against the appellant till that time and as per the appellant, the proposal did not contain the entire material and the detaining authority was not apprised of the complete material while taking a decision in passing the detention order, Shri Parikh despite instructions could not give any reply. The only submission was that even a single case is enough and sufficient to form the basis of passing the detention order.

17. Before dealing with the respective arguments, we first refer to the scheme of the 1985 Act and the law relating to and applicable to preventive detention.

18. In 1985, the State Legislature enacted the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "PASA") with an object to provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order. Section 2 of the PASA gives the definitions. Section 3 Sub- Section(1)of PASA gives power to the State Government to pass the detention order against any person in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Sub-Section (2) of Section 3 of PASA gives power to the District Magistrate or Commissioner of Police so authorized by State Government to be conferred with the power under Sub-Section (1). Sub- Section (3) of Section 3 of PASA gives that if an authorized officer passes such order of detention, the same shall be reported to the State Government along with the grounds and other material and such order would not remain in force for more than 12 days from the date of its making unless approved by the State Government in the meantime. Sub-Section (4) of Section 3 of PASA defines the phrase "acting in any manner prejudicial to the maintenance of public order". The explanation to Sub-Section (4) further elaborates as to what would be public order.

19. Section 4 of PASA provides for the execution of the detention order, according to which, it can be executed at any place in the State in the manner provided for execution of warrant of arrest under

the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."). Section 5 of PASA gives the power to the State Government to regulate place and conditions of detention. Section 6 of PASA mentions that the grounds of detention could be severable. Section 7 of PASA provides that detention orders would not be invalid or inoperative on certain grounds. Section 8 of PASA provides the powers in relation to absconding persons by invoking such powers prescribed under the Cr.P.C., in particular, Sections 82 to 85 and also to ensure appearance by notification in Official Gazette. It further provides in Sub-Section 2(b) that where any such person fails to comply with such order, would be liable for trial and upon conviction could be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

20. Section 9 of PASA provides for disclosure of the grounds of detention to the detenue within seven days from the date of detention. Section 10 of PASA provides for constitution of Advisory Board. Section 11 of PASA provides right to the detenue to make a representation to the Advisory Board. Section 12 deals with the procedure to be followed by the Advisory Board. Section 13 of PASA provides for action to be taken upon the report of the Advisory Board. Section 14 of PASA provides for maximum period of detention to be one year from the date of detention. Section 15 of PASA gives the power to the State Government to revoke the detention order. Section 16 gives power to the State Government of temporary release of the detenue. Section 17 gives protection to the State Government or any Officer or person of action taken in good faith. Section 18 provides that after the commencement of PASA, no order of detention to be passed under the National Security Act, 1980 but action to be taken only under PASA. Section 19 of PASA provides for repeal and saving of Gujarat Prevention of Anti-Social Activities Ordinance, 1985.

21. The detention order can be challenged by way of Habeas Corpus Petition under Article 226 of the Constitution of India, however, only on limited grounds as have now been settled by various pronouncements of the Hon'ble Supreme Court and Full Bench of this Court. It is also well settled that writ petition would be maintainable even at the stage of pre-execution of the detention order by claiming relief of writ of mandamus restraining the authorities from detaining or from passing a detention order. Reference may be had to :

(i) Additional Secretary to the Government of India v/s Alka Subhash Gadia & Anr. reported in 1992(Supp 1) SCC 496,

(ii) State Of Maharashtra & Ors. v/s Bhaurao Punjabrao Gawande reported in 2008(3) SCC 613,

(iii) Deepak Bajaj v/s State of Maharashtra reported in 2008(16) SCC 14, and

(iv) Rekha v/s State of Tamil Nadu Tr. Sec. to Govt.

& Anr. reported in 2011(5) SCC 244,

(v) Subhash Popatlal Dave v/s Union of India & Anr.

Reported in 2012(7) SCC 533,

(vi) Vijaysinh @ Gatti Pruthvisinh Rathod v/s State of Gujarat & Another reported in 2015(1) Gujarat Law Reporter 703(FB).

22. The above cases not only deal with the scope of judicial review in matters of preventive detention but also deal with the scope of interference at the pre-execution stage of detention order.

23. The leading case on the point is of Alka Subhash Gadia(supra) and the law laid down in paragraph 30 thereof is reproduced below:

> "30. As regards his last contention, viz., that to deny a right to the proposed detenu to challenge the order of detention and the grounds on which it is made before he is taken in custody is to deny him the remedy of judicial review of the impugned order which right is a part of the basic structure of the Constitution, we find that this argument is also not well merited based as it is on absolute assumptions. Firstly, as pointed out by the authorities discussed above, there is a difference between the existence of power and its exercise. Neither the Constitution including the provisions of Article 22 thereof nor the Act in question places any restriction on the powers of the High Court and this court to review judicially the order of detention. The powers under Articles 226 and 32 are wide, order resulting in civil or criminal consequences. However, the courts have over the years evolved certain self-restraints for exercising these powers. They have done so in the interests of the administration of justice and for better and more efficient and informed exercise of the said powers. These self-imposed restraints are not confined to the review of the orders passed under detention law only. They extend to the orders passed and decisions made under all laws. It is in pursuance of this self- evolved judicial policy and in conformity with the self-imposed internal restrictions that the courts insist that the aggrieved person first allow the due operation and implementation of the concerned law and exhaust the remedies provided by it before approaching the High Court and this court to invoke their discretionary extraordinary and equitable jurisdiction under Articles 226 and 32 respectively. That jurisdiction by its very nature is to be used sparingly and in circumstances where no other efficacious remedy is available. We have while discussing the relevant authorities earlier dealt in detail with the circumstances under which these extraordinary powers are used and are declined to be used by the courts. To accept Shri Jain's present contention would mean that the courts should disregard all these time- honoured and well-tested judicial self-restraints and norms and exercise their said powers, in every case before the detention order is executed. Secondly, as has been rightly pointed out by Shri Sibal for the appellants, as far as detention orders are concerned if in every case a detenu is permitted to challenge and seek the stay of the operation of the order before it is executed, the very purpose of the order and of the law under which it is made will be frustrated since such orders are in operation only for a limited period. Thirdly, and this is more important, it is not correct to say that the courts have no power to entertain grievances against any

> detention order prior to its execution. The courts have the necessary power and they have used it in a proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (I) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds or (v) that the authority which passed it had no authority to do so. The refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on any other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."

24. We may further record here that the law laid down in Alka Subhash Gadia(supra) has remained consistent and has throughout been followed in all the subsequent cases by the Supreme Court and, as such, is the settled law of the land.

25. In the light of the above scheme of PASA and the law laid down by the Supreme Court, we deal with the facts and material of the present case as also the submissions advanced by the learned counsel for the parties.

26. From the above position of law and the scheme of the Act, what clearly emerges is that although a writ-petition under Article 226 of the Constitution of India filed at the stage of pre-execution of detention order or under the apprehension of a detention order being passed, would be maintainable, however, on very limited scope of judicial review. The grounds for maintaining such petition and interfering at the stage of pre-execution of a detention order would be very limited as laid down by the Supreme Court in various judgments referred above. Further, after the detention order is executed, writ of habeas corpus would be maintainable wherein this Court under its extraordinary power under Article 226 of the Constitution may examine the correctness of a detention order on available grounds and if it finds that such detention order is not sustainable or the procedure prescribed for exhausting various remedies available to the detenue, is not strictly adhered to, may allow the same and set the detenue at liberty forthwith.

27. The present appellant has criminal antecedents of about 15 cases prior to the order of detention and 5 cases afterwards. May be in some of the cases, he may have been acquitted, final report submitted but still there are cases in which he has been convicted and some are still pending trial. The criminal history begins from 1992 and as per the material placed on record it continues up to 2017. Offences in 5 cases registered against the appellant are said to have been committed by him after the detention order was passed in July, 2014. However, the executing agency seems to have not given a serious consideration to the detention order by not executing the same so far.

28. It is borne out from the record that although interim protection was provided by the learned Single Judge on 15th December, 2014, which continued till 11th April, 2018, still there was enough

time when there was no interim protection from July, 2014 to 14th December, 2014 and after 11th April, 2018 till 7th October, 2019, when interim protection was provided by this Court in Civil Application No. 2 of 2019 in the present Letters Patent Appeal.

29. Such inaction on the part of the executing agency is being exploited by the counsel for the appellant by submitting that detention orders are passed without there being any threat to the maintenance of public order. It is a tool which is being used by the State authorities to keep the "sword of Damocles" hanging on the appellant and to execute the same at their sweet will. This according to Shri Mangukiya is malafide action on the part of the State authorities. The facts of the present case do lend credence to the above submission advanced by Shri Mangukiya otherwise, if there was actually any threat to public order from the appellant, then, detention order ought to have been executed either while he was in custody or immediately upon his release from the judicial custody in the criminal cases already registered.

30. Having examined the list of cases mentioned by the appellant in his petition and also as provided by the learned Additional Public Prosecutor, we do find that there are several cases which relate to petty offences, however, there are few which relate to heinous offences such as offences under sections 302 and 307 of Indian Penal Code, a couple of cases under the Prohibition Act and a couple of cases under the Gambling Act. The heinous offences are much prior to the passing of the detention order. One is of 1987 and other is of 2010.

31. The learned Single Judge has considered the material placed before him and arrived at a conclusion that the detention order was rightly passed holding the appellant to be a dangerous person. Reasons given by learned Single Judge cannot be faulted with.

32. The submission of Shri Mangukiya, learned counsel for the appellant that the learned Single Judge was much influenced by wrongly recording that there were 45 cases registered against the appellant may have some substance. However, this discrepancy of figures is of no help to the appellant. Firstly that this was not the only reason for dismissing the petition and to hold the appellant to be a dangerous person. There were other factors also, as are reflected from a perusal of the order of the learned Single Judge.

33. The next ground raised by learned counsel with regard to the petitioner not being a dangerous person and the finding to that effect being vitiated, also has no legs to stand. This Court under exercise of power of judicial review under Article 226 of the Constitution cannot apparently record a finding to that effect. It is for the Detaining Authority to examine the material before it in order to arrive at a subjective satisfaction. The FIR registered as CR No. I 75/14, copy of which is on record refers to an incident where the complainant was kidnapped in a broad daylight, threatened for being eliminated and also physical injuries being caused to him by a sharp-edged weapon and sticks which were dangerous to life as the injuries are reported to have been caused on the back, neck and head also, kidnapping had taken place from a market area in the month of June, 2014 at about 8.00 to 8.30 a.m., therefore, finding recorded by the learned Single Judge of the appellant being a dangerous person affirming the subjective satisfaction of the Detaining Authority cannot be faulted with. There was also as such no abuse of power by the Detaining Authority in curtailing the liberty of

the appellant by passing the detention order inasmuch as it was only empowered under the 1985 Act to pass such an order.

34. Whether or not the Detaining Authority was apprised of the entire criminal antecedents of the appellant is also not relevant inasmuch it is by now well settled that even a single case depending upon the gravity and nature of the offence would be sufficient to sustain a detention order.

35. The appellant also cannot derive any advantage of the fact that the Executing Agency did not execute the detention order, even though it had ample opportunity to do it, for two reasons. Firstly in view of the fact that even after the interim protection was provided in the petition filed by the appellant at the pre-execution stage, the appellant misused the liberty and got involved in 5 other cases spread over a period of three years from 2015 to 2017. Secondly any lethargic or callous approach of the Executing Agency cannot extend any benefit to the appellant. To us it appears that the Executing Agency was in collusion with the appellant and deliberately for extra legal considerations did not execute the detaining order.

36. We are also convinced that apparently the appellant was conscious and aware of the detention order inasmuch as the facts and grounds stated in the writ petition clearly refer to the contents of the detention order that only three cases were taken into consideration by the detaining authority and made the basis of passing the detention order. Learned counsel for the appellant made his submission to the effect that until and unless the detention order is served, the appellant could not have legally taken cognizance of it nor can it be said that he had due knowledge of the detention order.

37. In law may be the detention order was not formally served upon the appellant and its execution actually not done but the appellant knowing fully well the contents, did approach the Court stating that the detention order had not been passed. On the contrary it ought to have been stated that the detention order was passed four months back but had not been executed. The appellant proceeded on the assumption that there was no detention order in existence. In fact the pleadings of the Special Civil Application are self contradictory. On the one hand it is said that detention order has not been passed and on the other hand it is stated that the detention order has been passed and is likely to be executed.

38. In the present case, we also notice that the conduct of the appellant and also his counsel has been recorded by the learned Single Judge in the order dated 11.04.2018. The appellant misused the interim protection granted to him and continued to commit five more offences which included offences of heinous nature and thus may not be entitled to any indulgence by this Court under its extraordinary equitable and discretionary jurisdiction in this Letters Patent Appeal. We may also record here that none of the 5 grounds stated by the Supreme Court in the case of Alka Subhash Gadia (supra) to interfere at the stage of pre-execution of detention order are existing in the present case. The 5 grounds are already narrated above and having considered the submissions and having perused the material on record, we do not find any of the grounds to be existing. Thus also the Letters Patent Appeal deserves to be dismissed.

39. Further the effort to linger on the matter before the learned Single Judge by repeated adjournments, leave notes and sick notes by the two counsels and not appearing even despite warnings, also does not entitle the appellant to any relief under Article 226 of the Constitution. The learned Single Judge rightly dismissed the petition and imposed the costs.

40. A detention order is a preventive measure. It is only in rare cases where there is threat to public order being disturbed that such action is taken. In order to initiate a process for passing a detention order, the Sponsoring Authority which is normally the Inspector or the Police officials of a particular Police Station on being satisfied about threat of public order being disturbed by any person falling under the various categories provided under the PASA submits a report accompanied by all the relevant material to the Detaining Authority authorized by the State. Such Detaining Authority after examining the recommendation and the material accompanying it and being subjectively satisfied that the grounds exist for passing a detention order that it proceeds to pass a detention order. What is to be noticed is that the Sponsoring Authority and the Detaining Authority both have to satisfy themselves with all the material before them that a particular person is required to be detained as a preventive measure so as to maintain public order in the area. They also have to examine and record a finding that if such person is not detained by way of this preventive measure, there would be likelihood of breach of peace and disturbance of public order.

41. It is not in every case where offence is committed under the various statutory enactments that preventive measures are to be taken. It is only in those rare and special cases where such person involved in violation of law causes a threat to maintenance of public order that process under the PASA starts.

42. Now if despite the Sponsoring Authority and Detaining Authority, which could be the State, the District Magistrate or the Commissioner of Police as may be duly authorized by the State, having recorded their subjective satisfactions of an imminent threat to maintenance of public order and such detention order having been passed is not given effect to by executing the same, then there is something seriously wrong. This wrong needs to be carefully and thoroughly examined by the higher authorities. If the detention order is not to be executed then it serves no purpose and it would be better that detention orders are not passed, rather than passing detention orders and then not executing it actually amounts to destroying the very scheme of preventive detention.

43. We may record here that the conduct of the executing agency needs to be questioned. The detention order having been passed on 4th July, 2014, the appellant being already in custody, where was the difficulty for the Executing Agency in executing the detention order. Section 4 of the 1985 Act provides that it can be executed at any place in the State in the manner provided for execution of arrest warrant under the Cr.P.C. But, despite the same, the executing agency did not execute the detention order for the reasons best known to it and allowed a margin of four months to the appellant to file a petition and obtain an interim order at pre-execution stage, while still in judicial custody. The Executing Agency would then be safe in explaining that it could not execute the detention order on account of the interim protection by the High Court. There prima facie appears to be a clear collusion between the appellant and the executing agency.

44. This is a fit case where the Director General of Police and the Principal Secretary, Home must get an enquiry conducted as to why the detention order was not executed immediately upon its passing. The Court also takes notice of the fact that in a large number of cases, although filed at supposedly pre-detention stage, where detention orders have already been passed much earlier but not executed. The responsibility of executing the detention order is of the police officials and not the Detaining Authority. The very purpose of passing a detention order is frustrated when the detention order is not executed forthwith and allows such persons to take shelter from the Court.

45. The Director General of Police and the Principal Secretary, Home are directed to issue circulars to Authorities all over the State to ensure the execution of the detention orders forthwith wherever passed, as per the manner prescribed under the 1985 Act and not to keep the detention orders only on file. Such inaction has serious consequences and reflects insensitivity and may be deliberate mischief on the part of the State authorities.

46. The above two superior Authorities will also get an enquiry conducted in cases where detention orders have been passed but have not been executed. The cause and the reasons for the same in each and every case of such nature should be enquired into.

47. If it is found that the detaining authorities are passing orders by ante-dating them or by signing such orders and keeping them on file and not forwarding them for execution then, such proceedings be submitted before the Chief Secretary of the State for appropriate action against such Officers.

48. We have come across cases where detention orders have been passed five years back and without there being any interim protection, the detention orders are not being executed and now after 5-7 years such persons are approaching this Court for protection.

49. For all the reasons recorded above, we are not inclined to interfere with the judgment of the learned Single Judge dismissing the writ petition and imposing the cost of Rs.10,000/-.

50. The Letters Patent Appeal is, accordingly, dismissed. Interim relief stands vacated forthwith.

51. In view of the dismissal of the main Letters Patent Appeal, connected Civil Applications stand disposed of.

52. The directions given above to the State Authorities i.e. the Director General of Police and the Principal Secretary, Home to be strictly adhered to and complied with.

(VIKRAM NATH, CJ) (A.J. SHASTRI, J) RADHAKRISHNAN K.V./A.M. PIRZADA