

PETITIONER:
KANUJI S. ZALA

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT: 04/05/1999

BENCH:
G.T.Nanavati, S.N.Phukan

JUDGMENT:

Nanavati.J.

The petitioner is challenging in this petition under Article 32 of the Constitution the order of detention dated 29.1.98 passed by the District Magistrate, Mehsana, in exercise of his powers under Section 3 of the Prevention of the Gujarat anti Social Activities Act, 1985 for his detention thereunder.

In the grounds of detention it is stated that the petitioner is a Bootlegger as he is involved in the illegal activity of selling liquor. Five cases have been filed against him under the Bombay Prohibition Act. Moreover, three witnesses have given statements wherein they have referred to the activity of the petitioner of selling liquor and indulging in violence for carrying on the said activity. It is further stated in the grounds that the said activity of the petitioner is prejudicial to the maintenance of public order.

The order of detention is challenged on the ground that there was no material before the District Magistrate on the basis of which he could have genuinely satisfied himself that the activity of the petitioner was prejudicial to the maintenance of public order. It was submitted by the learned counsel that the statements of the three witnesses merely refer to some stray incidents of beating which at the highest can be said to have affected law and order and not public order. In support of her submission, the learned counsel relied upon three decisions of this Court in Om Prakash Vs. Commissioner of Police & Ors. - 1988 suppl. (2) SCC 576, Rashidmiya @ Chhava Ahmedmiya shaik Vs. Police Commissioner, Ahmedabad and Anr. - 1989 (3) 321 and in Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City and Anr.- 1989 Suppl. (1) SCC 322.

In our opinion there is no substance in this contention. In none of the three cases relied upon by the learned counsel the point whether public order can be said to have been disturbed on the ground that the activity of the detainee was harmful to the public health arose for consideration. It appears that in those three cases, the detaining authority had not recorded such satisfaction. Moreover, in those cases the detaining authorities had referred to some incidents of beating but there was no

material to show that as a result thereof even tempo of public life was disturbed. In this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. The detaining authority has also stated that the statements of witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of the public life was disturbed in those localities for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and close their doors.

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. 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. The observation made by this Court in *Om Prakash Vs. Commissioner of Police & Ors.* - 1988 Supp. (2) SCC 576 that "as in *Piyush Mehta Case*, the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act and as such, the order is liable to be quashed" are to be understood in the context of the facts of that case.

As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detainee was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record it cannot be said that the satisfaction of the District Magistrate, in this behalf was not reasonable or genuine.

As we do not find any substance in this petition, it is dismissed.