

2000 (4) GLR 2978 ,2000 eGLR\_HC 10002978

**SPECIAL CIVIL APPLICATION***Before the Hon'ble MR A L DAVE,J***FIROZ ANWARBHAI FRUITWALA vs. COMMISSIONER OF POLICE, SURAT  
CITY AND ORS.**

No : 294

Year : 2000 Decided on : 19/4/2000

**(A) PREVENTIVE DETENTION - Gujarat Prevention of Anti-Social Activities Act, 1985 (XVI of 1985) - Sec. 3(1) - Constitution of India, 1950 - Art. 22(5) - Representation rejected by one line stating that the said representation is rejected after consideration - Whether the Government can be said to have considered the representation in its right perspective - Held, the right of making a representation is not given to the detenu for mechanical rejection by the appropriate authority without considering the points raised in the representation - Making of the representation is not an empty formality provided by the Constitution - Such mechanical approach in considering the representation would result into denial of right of making representation and rendering the provisions of Art. 22(5) of the Constitution non-existence - Detention order quashed and set a s i d e .**

The question that requires consideration is whether the Government can be said to have considered the representation in its proper perspective. The detenu had a right of making an effective representation guaranteed under the Constitution [Art. 22(5)]. It is expected of the Government to afford the detenu an earliest opportunity of making a representation against the order and the very purpose behind providing this right is that the Government may reconsider the decision of detaining the detenu in light of the representation. The right of making a representation is not given to the detenu for mere mechanical rejection by the appropriate authority without considering the points raised in the representation. No affidavit-in-reply is filed either on behalf of the Government or by the detaining authority, and as is stated in all fairness by the learned Assistant Government Pleader, no exercise is undertaken by the Government to ascertain as to whether what is stated in the affidavit is correct or not. No attempt is made to cross-check the contents of the affidavit, particularly when they contradict the statements of anonymous witnesses, which form basis of the order of detention. Making of representation is not an empty formality provided by the Constitution. The authority concerned is expected to perform its duty with all seriousness and sincerity at its command. Such mechanical approach in considering the representation would result in to rendering the provisions of Art. 22(5) of the Constitution non-existent. Mechanical rejection of representation amounts to denial of right of making a representation guaranteed under the Constitution. This in itself is sufficient to hold that the continued detention of the detenu is bad in law. The petition deserves to be allowed on this ground alone. (Para 6)

*N. M. Kapadia, for the Petitioner.**K. T. Dave, A.G.P., for Respondent Nos. 1, 2 & 3.*

A. L. DAVE, J. Commissioner of Police, Surat City, Surat, passed an order on November 8, 1999, in exercise of powers under Sec. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("P.A.S.A. Act" for short), detaining Mohd. Firoz Anwarbhai Fruitwala of Gopipura, Surat, under the provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the detenu under Bombay Prohibition Act. The authority also considered the statements of two anonymous witnesses. According to the authority, the activity of the detenu is that of a bootlegger and is detrimental to public order. The authority was satisfied that the witnesses suffered from genuine fear from the detenu in respect of their person and property, and therefore, powers under Sec. 9(2) of the P.A.S.A. Act are required to be exercised by not disclosing identity of the witnesses. The detaining authority considered the possibility of resorting to less drastic remedies under ordinary laws and came to conclusion that in order to immediately prevent the detenu from pursuing his illegal and anti-social activities, detention under P.A.S.A. Act is required to be resorted to.

3. The petitioner, who is the father of the detenu, has challenged the order of detention by this petitioner on various grounds. However, Mr. Kapadia, learned Advocate appearing for the petitioner, has restricted his arguments to the ground of non-consideration of a representation made on behalf of the detenu by the petitioner in its proper perspective. He submitted that a representation was made to the Governor by the petitioner-father of the detenu on December 31, 1999. That representation was supported by an affidavit sworn by the petitioner controverting the statements of witnesses regarding the incidents narrated by them. The Government, by communication dated January 11, 2000, communicated to the detenu that the representation made by his father to the Governor is rejected by the Government, after due consideration. Mr. Kapadia, therefore, urged that the authority does not seem to have considered the representation in light of the affidavit. There does not appear any exercise to have been undertaken by the Government while considering the representation in light of the affidavit of the petitioner. No steps seem to have been taken to verify about the correctness of the affidavit of the petitioner or the statements of the anonymous witnesses. Mr. Kapadia, therefore, submitted that the representation, though verbally said to have been rejected after due consideration, is not considered in proper perspective, and therefore, it is not consideration at all. The right of the detenu, therefore, of making an effective representation is infringed and the continued detention, therefore, would be rendered bad in law. Mr. Kapadia, therefore, urged that the petition may be allowed and the order impugned may be quashed and set aside.

4. Mr. K. T. Dave, learned Assistant Government Pleader, has opposed this petition. On being asked pointedly, after referring to the files, he states that there does not appear to be any exercise undertaken for verifying the correctness of the affidavit of the petitioner (father of the detenu) in contrast to the allegations made in the statements of anonymous witnesses. However, he tried to submit that the appropriate authority of the Government has rejected the representation after due consideration, and therefore, the Court may not entertain this petition.

5. Having regard to rival side contentions, the fact that emerges, without any dispute, is that a representation was sent to the Governor on behalf of the detenu by the petitioner-Anwarali Jaminali Fruitwala on December 31, 1999. The said representation was accompanied by an affidavit sworn by the petitioner, wherein he stated that no incidents as alleged in the statements of the anonymous witnesses were found to have occurred, on his personal inquiry in that area. The said representation is rejected by the Government by one line communication

stating that the representation made by the father of the detenu to "the Governor" dated 31-12-1999 is rejected by the Government after consideration.

6. The question that requires consideration is whether the Government can be said to have considered the representation in its proper perspective. The detenu had a right of making an effective representation guaranteed under the Constitution [Art. 22(5)]. It is expected of the Government to afford the detenu an earliest opportunity of making a representation against the order and the very purpose behind providing this right is that the Government may reconsider the decision of detaining the detenu in light of the representation. The right of making a representation is not given to the detenu for mere mechanical rejection by the appropriate authority without considering the points raised in the representation. No affidavit -in-reply is filed either on behalf of the Government or by the detaining authority, and as is stated in all fairness by the learned Assistant Government Pleader, no exercise is undertaken by the Government to ascertain as to whether what is stated in the affidavit is correct or not. No attempt is made to cross-check the contents of the affidavit, particularly when they contradict the statements of anonymous witnesses, which form basis of the order of detention. Making of representation is not an empty formality provided by the Constitution. The authority concerned is expected to perform its duty with all seriousness and sincerity at its command. Such mechanical approach in considering the representation would result in rendering the provisions of Art. 22(5) of the Constitution non-existent. Mechanical rejection of representation amounts to denial of right of making a representation guaranteed under the Constitution. This in itself is sufficient to hold that the continued detention of the detenu is bad in law. The petition deserves to be allowed on this ground alone.

7. In view the above discussion, this petition is allowed. The impugned order of detention dated November 8, 1999, passed against the detenu is hereby quashed. The detenu-Mohd. Firoz Anwarbhai Fruitwala is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

(MS)

Petition allowed.

પ્રતિબંધક અટકાયત - ગુજરાત અસામાજિક પ્રવૃત્તિઓ અટકાયત અધિનિયમ, ૧૯૮૫ - કલમ ૩(૧) - ભારતનું બંધારણ, ૧૯૫૦ - આર્ટિ. ૨૨ (૫) - પ્રતિનિધિત્વ એક જ લીટીમાં સંક્ષેપાયું કે તે વિચારણા પછી નકારવામાં આવ્યું છે - શું સરકારે પ્રતિનિધિત્વને સાચા અર્થમાં વિચાર્યું છે ? - ઠરાવવામાં આવ્યું કે પ્રતિનિધિત્વ કરવાનો હક્ક આપવામાં આવ્યો નથી કે, તે પ્રતિનિધિત્વમાં ઉઠાવેલા મુદ્દાઓને યોગ્ય સત્તાવાળાઓ દ્વારા વિચારણામાં લીધા સિવાય યંત્રવત્ નકારી શકે - પ્રતિનિધિત્વ કરવા વિષે બંધારણમાં કરાયેલી જોગવાઈ નિરર્થક ઔપચારિકતા નથી - આવો યંત્રવત્ પ્રસ્તાવ પ્રતિનિધિત્વની વિચારણામાં આર્ટિ. ૨૨(૫)ની જોગવાઈ મુજબ પ્રતિનિધિત્વના હક્કનો અસ્વીકાર કરે છે અને આર્ટિકલને બિનઅસ્તિત્વ બનાવે છે.