IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19622 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE Sd/-

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**No**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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SAVENDRA BALADIN YADAV THROUGH BAJENDRA BALADIN YADAV
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MS BHAKTI M JOSHI(3820) for the Petitioner(s) No. 1
MR ROHAN RAVAL, AGP for the Respondent(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2
GOVERNMENT PLEADER for the Respondent(s) No. 3

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CORAM: **HONOURABLE MR. JUSTICE A.Y. KOGJE**
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 06/05/2024

ORAL JUDGMENT (PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. Leave to correct the name of the petitioner. Amendment to be carried out forthwith.

2. This petition under Article 226 of the Constitution of India is filed for following relief:-

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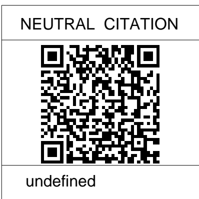

"(A) YOUR LORDSHIPS be pleased to issue appropriate writ, order or directions and be pleased to quash and set aside the impugned order of detention dated 28/10/2023 (Annexure 'A' to the petition) passed by the respondent no.2 in the interest of justice;"

(B) to (D) xxxx."

2. Thus, essentially, the challenge is to the order of detention dated 28.10.2023 passed by the Police Commissioner, Ahmedabad, respondent No.2 herein, by which the petitioner has been detained as a "dangerous person" based on two offences registered against him, details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Saherkotda Police Station	11191041230291 of 2023 dated 01.04.2023	307, 398, 34 and 120B of IPC, 25(1-B)(A), 27(2) of the Arms Act and 135(1) of the GP Act	20.10.2023
2	DCB Police Station	11191011230084 of 2023 dated 05.04.2023	25(1-B)(A), 29 of the Arms Act and 135(1) of the GP Act	28.07.2023

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside as registration of the offences under Sections of IPC and Arms Act by itself cannot bring the case of the detenue within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detenue submits that illegal activity likely

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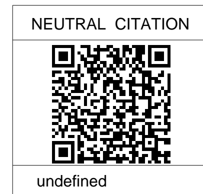

to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

3.1 It is submitted that the offences are pertaining bodily injuries against individuals and will therefore not amounting to breach of public order as no where in the grounds of detention, it is coming out that the sporadic act of the petitioner has caused disturbance to public order. In any case, option was always available to the detaining authority to resort to cancellation of bail of the petitioner.

4. As against this, learned AGP submitted that the

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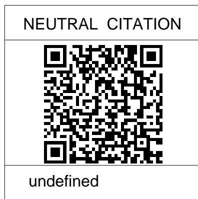

detaining authority had sufficient material on the record to pass the order of detention, particularly reference to the same is made by the detaining authority in the very order of detention where the detaining authority has referred to the fact that it was the petitioner who had himself confessed to commission of offences. Not only that, there are other supporting evidences also which the detaining authority has taken into consideration like drawing of panchnama, which led to discovery of vehicle of which theft was committed. The two FIRs registered against the petitioner are under Chapter-16 and 17 of IPC, thereby attracting the ingredients of "dangerous person".

5. Having heard learned advocates 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 FIR/s cannot have any bearing on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of section 2(c) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the

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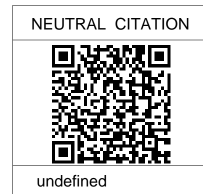

whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the public order. In this connection, it will be fruitful to refer to a decision of the Supreme Court in ***Pushker Mukherjee v/s. State of West Bengal*** [AIR 1970 SC 852], where the distinction between 'law and order' and 'public order' has been clearly laid down. The Court observed as follows :

> “Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act.”

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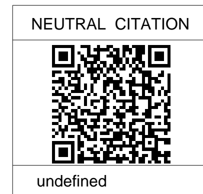

6. As is held in the preceding paras, the offence in which the petitioner is involved, are against private individuals and the petitioner has been enlarged on bail and therefore, ordinary law is sufficient to prevent the petitioner from indulging in further offence, particularly when the petitioner has been granted bail in connection with both the offences on which the detaining authority has relied upon to arrive at a subjective satisfaction. At the same time, the detaining authority has not taken into consideration restoring to the procedure for cancellation of bail.

7. The Court has also taken into consideration the fact that the petitioner has been arrested in the first offence on 07.04.2023 and enlarged on regular bail by the Court of competent jurisdiction on 20.10.2023 and in the second offence arrested on 05.04.2023 and enlarged on 28.07.2023 and the detention order does not reflect application of mind to the fact that the Detaining Authority has considered cancellation of bail to be ineffective method to curtail activities of the petitioner. Therefore, in the opinion of the Court, the Detaining Authority not having taken into consideration the cancellation of bail option. The subjective satisfaction would stand vitiated as is held in recent decision of the Hon'ble Supreme Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors**. reported in **2023 (9) SCC 633**, the Hon'ble Supreme Court has made following observations in para 19 as

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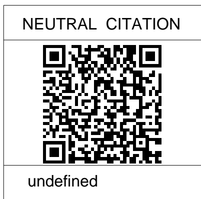

under:-

> “19. In any case, the State is not without a remedy, as in case the detenue is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.”

8. From the record, it also appears that the first and second offences are inter-connected, where the petitioner was not even present, but had helped other accused persons in disposing of the fire arms, for which the second offence was registered.

9. The Court also finds that there is delay of almost two months in passing the order of detention after bail was granted to the petitioner in the second offence on 28.07.2023. The Apex Court in the case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 SC 4715** has observed as under:-

> “11. We are persuaded to allow this appeal on the following two grounds:
>
> (i) Delay in passing the order of detention from the date of proposal thereby snapping the "live and proximate link" between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.
>
> (ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact of the appellant detenu being released on bail in

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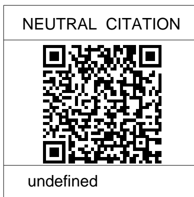

both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

DELAY IN PASSING THE ORDER OF DETENTION

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in **Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403** , wherein the following observation is made:

"Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing."

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

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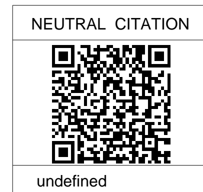
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15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

xxxxx

20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."

10. No need to say when a citizen is deprived of his

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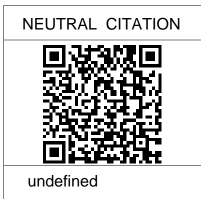

personal liberty by keeping him behind the bar under the provisions of the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

11. In view of above, we are inclined to allow this petition, because simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act.

12. In the result, the present petition is hereby allowed and the impugned order of detention dated 28.10.2023 passed by the respondent–detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly.

Direct service is permitted.

Sd/-
(A.Y. KOGJE, J)

Sd/-
(SAMIR J. DAVE,J)

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