IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21610 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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HUSEN @ CHULBUL KADARMIYA SUNNI THROUGH HUSNA HUSEN @ CHULBUL KADARMIYA SUNNI

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MS ALPA J DAVE(3924) for the Petitioner(s) No. 1
MR. YUVRAJ BRAHMBHATT, AGP for the Respondent(s) No. 1
GOVERNMENT PLEADER for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 09/05/2024

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

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

> *"(a) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the detention order No.PCB/PASA/DTN/187/2023 dated 09.10.2023 and the respondents be directed to set the petitioner at liberty forthwith, Annexure-'B'"*
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> *(b) to (d) XXXXX"*

2. Thus, essentially, the challenge is to the order of detention dated 09.10.2023 passed by the Police Commissioner, Vadodara City, respondent No.2 herein, by which the petitioner has been detained as a "dangerous person" based on two offences registered against him, the details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Karelibaug Police Station	11196027230442 of 2023 dated 05.10.2023	325, 323, 294(b), 114 of IPC, 135 of the GP Act	09.10.2023
2	Ravpura Police Station	11196026230470 of 2023 dated 05.10.2023	143, 147, 149, 323, 294(b) of IPC, 135(1) of the GP Act, 3(1) of Public Property Damage Act	07.10.2023

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground that registration of offences under the Indian Penal Code 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 the alleged illegal activity likely to be carried out or alleged to have been carried out 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 situation. Further, except the statement of witnesses, registration of the above FIR/s and Panchnama drawn in pursuance of investigation, no other relevant and cogent material is on record connecting the alleged anti-social activity of the detenue with breach of public order.

3.1 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 the activity of the detenue with respect to the criminal cases had affected the even tempo of society causing threat to the very existence of normal and routine life of the people at large or that on the basis of the criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for the whole system to exist as a system governed by rule of law by disturbing public order.

3.2 It is submitted that the offences pertain to bodily injuries against individuals and will, therefore, not amount to breach of public order, as no where in the grounds of detention, it is coming out that the sporadic acts of the petitioner has caused disturbance to public order. In any case, an 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 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 offence. Not only that, there are other supporting evidence which the detaining authority has taken into consideration viz. the drawing of panchnama, which led to the discovery of muddamal - stolen vehicles. The three FIRs registered against the petitioner are under Chapters – XVI and XVII of the 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 three FIRs cannot have any bearing on "public order" as required under the Act since other relevant penal laws are sufficient enough to take care of the situation. Further, the allegations 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, there is material to suggest that the person has become a threat or menace to the society, so as to disturb the whole tempo of society and that the social apparatus is in peril at the instance of such person, it cannot be said that the detenue is a "dangerous 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.

6. 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."

7. 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. Therefore, the ordinary law is sufficient to prevent the petitioner from indulging in further offence, particularly when, the petitioner has been granted bail in connection with all the

three 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 recourse to the procedure of cancellation of bail.

8. The Court has also taken into consideration the fact that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction and the detention order does not reflect application of mind to the fact that the detaining authority has considered cancellation of bail to be an ineffective method to curtail the alleged illegal activities of the petitioner.

9. Therefore, in the opinion of the Court, since the detaining authority has not taken into consideration the option of cancellation of bail, the subjective satisfaction arrived at by the detaining authority would stand vitiated, as is held in the 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**, wherein, the Hon'ble Supreme Court has made the following observations in para 19;

> **"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."

10. No need to say that when a citizen is deprived of his personal liberty by keeping him behind the bars under the provisions of PASA law, without trial by the competent court, the detaining authority is required under the law to justify its action. In absence of any reply /

counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

11. The Court has taken into consideration the fact that the detaining authority has passed the order of detention on the same day of the petitioner being enlarged on regular bail on 09.10.2023. In view of the above, before passing the impugned order of detention, the detaining has not applied its mind while arriving at the subjective satisfaction.

12. 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.

13. In the result, the present petition is hereby allowed and the impugned order of detention dated 09.10.2023 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)

PARESH SOMPURA