IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6820 of 2024

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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MAHENDRA S/O JUVANSINGH MINAVA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. RAJENDRA D JADHAV(10026) 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 : 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 reliefs:

"A. xxx

B. THIS HON'BLE COURT may be pleased to quash and set aside detention order being PCB /PASA /DTN/928 2023 dated 16.11.2023 passed by the Respondent No.2 herein and executed on 16/11/2023 which is Annexed at Annexure-A by issuing an appropriate writ, order or direction and further be pleased to order the release of the Detenue/Petitioner from jail, in the interest of justice;

C. to E. xxx;"

2. Thus, essentially, the challenge is to the order of detention dated 16.11.2023 passed by the Police Commissioner, Surat, by which the petitioner has been detained as a "dangerous person" based on three offence 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	Pandesara Police Station	11210045225164 of 2022 dated 08.12.2022	454, 457, 380 and 34 of IPC	07.08.2023
2	Pandesara Police Station	11210045225326 of 2022 dated 23.12.2022	457, 380, 395 and 34 of IPC	10.11.2023
3	Pandesara Police Station	11210045225471 of 2022 dated 22.12.2022	457, 380, and 34 of IPC	17.08.2023

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

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.

3.1 It is submitted that the offences are pertaining to theft of muddamal articles of private 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.

3.2 Learned advocate for the petitioner has also submitted that some of the documents supplied by the detaining authority along with the order of detention are illegible therefore, the subjective satisfaction arrived at by the detaining authority is vitiated. In this connection, learned advocate has relied upon the

decision of this Court in the case of ***State of Manipur Vs. Buyamayum Abdul Hanan @ Anand***, reported in JT **2022 (10) SC, 264** and submitted that the Apex Court when found that the documents supplied along with the grounds of detention were either blurred copies and many of the documents requested by the detenue supplied in such facts the order of detention was ordered to be quashed and set aside.

4. Learned AGP objecting to the petition has submitted that the detaining authority has not refereed to the statement of the secret witnesses, as is reflected in the grounds of detention, moreover, it is not necessary that subjective satisfaction can be arrived at only on the basis of the statement of the secret witnesses, particularly when there is no question of invoking the privilege under Section 9(2) of PASA and there is no reference to the statement of secret witnesses and the same are not required to be supplied. Over and above learned AGP has submitted that the nature of offences in which the petitioner is involved which clearly falls under chapter 16 and 17 of the IPC and therefore, it is covered under the definition of a dangerous person under Section 2(c) of the PASA Act.

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 whole tempo of the society. 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."

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 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 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 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. The Court also finds that page Nos.229, 277, 281, 311 and 317, on which the detaining authority has relied upon to pass order of detention, are illegible. The Apex Court in the case of ***Buyamayum Abdul Hanan @ Anand*** **(supra)** has clearly held as under:

> "21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.
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> 22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation.
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> 23. Proceeding on the principles which have now been

> settled by this Court, it was specifically raised by the respondents in their writ petition and the reference has been made in para 9 of the petition referred to(supra) and in the pleadings on record, there was no denial in the counter filed by the appellants before the High Court that the documents which were supplied and relied upon by the detaining authority were legible and that has not denied respondent no.1 in making effective representation while questioning the order of detention and once this fact remain uncontroverted from the records as being placed before the High Court in writ petition filed under Article 226 of the Constitution and the legal principles being settled, we find no substance in the submissions made by learned counsel for the appellants that merely because respondent no. 1 has failed to raise this question before the detaining authority which go into root of the matter to take away the right vested in the appellant/detenu in assailing the order of detention while availing the remedy available to him under Article 226 of the Constitution of India.
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> 24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment."

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

10. 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.

11. In the result, the present petition is hereby allowed and the impugned order of detention dated 17.11.2023 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.

12. Rule is made absolute accordingly.

Direct service is permitted.

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

Sd/-
(SAMIR J. DAVE,J)

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