

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16302 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-****and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN****Sd/-**

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

SAIYEDALI @ SAIDU @ CHOR MANSURALI SAIYED THROUGH SHAIKH MUJIB
MAHEBUBBHAI
Versus
STATE OF GUJARAT

Appearance:

MR IRFAN I KATIYAMIYANA(10266) for the Petitioner(s) No. 1
MR JIGAR B OZA(11654) for the Petitioner(s) No. 1
MR PRANAV DHAGAT, 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

CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN****Date : 08/01/2024****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:

“(B) To issue a writ or directions, quashing the order of detention bearing no.KMARMANK/PCB/DTN PASA/455/2023 dated 29/08/2023 passed by the respondent no.2-Police Commissioner,Ahmedabad City-Ahmedabad and set the petitioner at liberty;”

2. Thus, essentially, the challenge is to the order of detention dated 29.08.2023 passed by the Commissioner of Police, Ahmedabad, respondent No.2 herein, by which the petitioner has been detained as a “dangerous person” on the basis of two FIR’s registered under the provisions of Indian Penal Code.

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

3.1 It is submitted that 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 detainee 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.

3.2 It is submitted that the offences are pertaining vehicle theft 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 to commit the offences of bodily injuries 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.

3.3 Learned advocate for the petitioner submitted that there is a delay of almost one and half months in passing the order of detention and therefore, the detention order itself is vitiated.

3.4 It is submitted that both the offences were registered on the same day and the petitioner was released on bail very next day in both the offences.

3.5 Learned Advocate for the petitioner relied upon judgment of the Apex Court in case of **Vijay Narain Singh Vs. State of Bihar & Ors.**, reported in **(1984) 3 SCC, 14**.

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 theft of vehicle. 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 mobile phones of which theft was committed.

5. Having considered the rival submission of both the sides and perused the documents on record, it appears that the detaining authority, by relying upon two offences, has detailed the petitioner, the details of which are as under:

Sr. No	Name of Police Station, FIR number and Sections	Date of registration of FIR	Date of release
1	Ramol Police Station, FIR No.11191024230747 of 2023 Sections 379 of IPC	02.07.2023	03.07.2023
2	Ramol Police Station, FIR No.11191024230748 of 2023 Sections 379 of IPC	02.07.2023	03.07.2023

6. The aforesaid detail would indicate that the both the offences were registered on 02.07.2023 and the petitioner was enlarged on the next day on 03.07.2023 in both the offences and thereafter the order of detention has been passed on 29.08.2023, which according to the Court is delayed by almost one and half

months. The Apex Court in the case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 S.C. 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 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.

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.

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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."

7. The detaining authority is expected to act with urgency where the detaining authority is satisfied that the petitioner is associated to such an activity which can be termed to be anti-social. In the present case, there is no explanation to delay and therefore, detention is vitiated.

8. The Apex Court in case of Vijay Narain Singh (supra) has held in para-31 as under-

"31. It is seen from Section 12 of the Act that it makes provision for the detention of an anti-social element. If a person is not an anti-social element cannot be detained under the Act. The detaining authority should, therefore, be satisfied that the person against whom an order is made under Section 12 of the Act is an anti-social element as defined in Section 2(d) of the Act. Sub-clauses (ii), (iii) and (v) of Section 2(d) of the Act which are not quite relevant for the purposes of this

case may be omitted from consideration for the present. The two other sub-clauses which need to be examined closely are sub-clauses (i) and (iv) of Section 2 (d). Under sub-clause (i) of Section 2 (d) of the Act, a person who either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offences affecting the human body or Chapter XVII dealing with offences against property, of the Indian Penal Code is considered to be an anti-social element. Under sub-clause (iv) of Section 2 (d) of the Act, a person who has been habitually passing indecent remarks to, or teasing women or girls, in an anti-social element. In both these sub-clauses, the word 'habitually' is used. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word 'habitually' separately in sub-cl. (i), sub-clause (ii) and sub-clause (iv) of Section 2 (d) and not in sub-clauses (iii) and (v) of Section 2 (d). If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the sub-clauses (i) to (v) of Section 2 (d) was sufficient to make a person an 'anti-social element', the definition would have run as 'anti-social element' means 'a person who habitually is ... ' As Section 2 (d) of the Act now stands, whereas under sub-clause (iii) or sub-clause (v) of Section 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause (i), sub-clause (ii) or in sub-clause (iv) by the person concerned to treat him as an 'anti-social element'. Commission of an act or omission referred. to in one of the sub-clauses (i), (ii) and (iv) and of another act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an 'anti-social element'. A single act or omission falling under sub-clause (i) and a single act or omission falling under sub-clause (iv) of Section 2(d)

cannot, therefore, be characterised as a habitual act or omission referred to in either of them. Because the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them they cannot be treated as habitual ones."

9. The State could have resorted to ordinary law by filing cancellation of bail application and that would have been sufficient to prevent the petitioner from indulging in further offence, particularly when the petitioner has been granted bail in connection with the offence on which the detaining authority has relied upon to arrive at a subjective satisfaction.

10. In the result, the Special Civil Application is allowed. The impugned order of detention dated 29.08.2023 passed by the respondent-detaining authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case.

11. Rule is made absolute accordingly.

Direct service is permitted.

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

Sd/-
(RAJENDRA M. SAREEN, J)

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