

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19211 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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

YUSUF @ SALO S/O RASHID SHAIKH**Versus****STATE OF GUJARAT & ORS.****Appearance:****K T BELADIYA(9101) for the Petitioner(s) No. 1****ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the****Respondent(s) No. 1****MR. ROHAN RAVAL, AGP, for the Respondent(s) No. 3****SERVED BY RPAD (R) for the Respondent(s) No. 1,2****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 03/04/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

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

“(B) Your Lordships Please To Be quash and set aside the detention order bearing No.PCB/PASA/DTN/840/2023 dated 07.10.2023, Annexure-A to this petition and further be pleased to release the detenue forthwith, and

2. The present petition is directed against order of detention dated 07.10.2023 passed by the respondent-detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short “the Act”) by detaining the petitioner-detenu as defined under section 2(c) of the Act. Under the order of detention dated 07.10.2023 passed by the Commissioner of Police, Surat by which the petitioner has been detained as a ‘dangerous person’ based on three offenses, which are registered within the Commissionerate of Surat.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that the petitioner was enlarged on regular bail by the Court of competent jurisdiction in each of the offenses registered against the petitioner, still the sponsoring authority or the detaining authority has not resorted to the lesser drastic remedy available. Learned advocate submitted that the offenses in which the petitioner has been arraigned have been registered against unknown person and thereafter, during the course of investigation, the petitioner has been arraigned as an accused however, there is no direct evidence against the petitioner. Still even if the petitioner is involved, then the offenses are not such which has resulted in breach of public order for disturbance in even tempo of life.

3.1 Lastly, learned advocate has submitted that the documents which are supplied alongwith the grounds of detention are illegible and therefore, has prevented the petitioner from exercising his constitutional right to make the representation. In this connection, learned advocate has relied upon the decision of the Apex Court in the case of ***State of Manipur Vs. Buyamayum Abdul Hanan @ Anand***, reported in JT 2022 (10) SC, 264.

4. As against this, learned Assistant Government Pleader has objected to the grant of the petition by submitting that the petitioner has been successively involved in three offenses under Chapter XV and XVI of the IPC and therefore, he is a habitual offender.

5. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained as a dangerous person by impugned order of detention dated dated 07.10.2023 by the detaining authority, Commissioner of Police, City Surat. The grounds of detention would indicate that the detaining authority has relied upon three offenses registered with Varachha Police Station and Chowkbazar Police Station, details of which are as under:-

Sr. No	Police Stand and C.R.Number	Sections	Date of Arrest/ Date of Bail
1.	Varachha Police Station Part-A C.R.No.1121006023214 6 date: 16.08.2023	379(A)(3) and 114 of the IPC	21.08.2023 28.09.2023
2.	Chowkbazar Police	379(A)(3) and	19.08.2023

	Station Part-A C.R.No.1121001223111 5 date: 19.08.2023	114 of the IPC	28.09.2023
3.	Chowkbazar Police Station Part-A C.R.No.1121001223111 6 date: 16.08.2023	379(A)(3) and 114 of the IPC	20.08.2023 28.09.2023

6. From the details as indicated in tabular form, it appear that the petitioner has been enlarged in each offense on the same day i.e. on 28.09.2023 and thereafter, the order of detention has been passed on 07.10.2023. However, the detaining authority has not resorted to the cancellation of bail and simple reference has been made as the petitioner is enlarged on regular bail he shall indulge in similar activity. However, there is no material to support this finding.

7. In view of decision of the Apex Court in case of **Shaik Nazeen v/s. State of Telanga and Ors.** reported in, **2023 (9) SCC 633**, the subjective satisfaction of the detaining authority would stand vitiated to the extent of not resorting to the lesser drastic remedy available. 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 detenu 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 has thereafter, taken into consideration the submission of learned advocate with regard to the illegible documents and the grounds of detention the documents supplied on page 183 to 191, which contained details regarding offenses registered against the petitioner on record, however, the documents being illegible has precluded the petitioner from making any representation. In this connection, the Apex Court in case of **Buyamayum Abdul Hanan @ Anand(supra)** has under has 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.

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.**

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.

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. 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.

10. In the result, the present petition is hereby allowed and the impugned order of detention dated **07.10.2023 being No.PCB/PASA/DTN/840/2023** 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.

11. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH