

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18696 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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YUNUS BACHUBHAI SUNNI**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR K I KAZI(5030) for the Petitioner(s) No. 1****MR ROHAN RAVAL, A.G.P. for the Respondent(s) No. 1 to 3**

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 12/04/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

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

(A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, quashing and setting aside the detention order No. PCB/PASA/DTN/188/2023 dated 09.10.2023 and the respondents be directed to set the petitioner at liberty forthwith-Annexure- "A"

(B) Your Lordships may be pleased to release the petitioner from his detention pending the admission, hearing and final disposal of this petition.

(C) XXXX

(D) XXXX

2. The challenge is to the impugned order of detention dated 09.10.2023 passed by the detaining authority namely the Police Commissioner- City Vadodara.

3. Learned advocate for the petitioner has submitted that the order of detention is without application of mind as the incident of two FIRs, on which, the detaining authority has relied upon are arising out of a private dispute and that too, out of the one incident, two separate FIRs have been passed, and therefore, there is no question of disturbance of public order.

4. Learned advocate submitted that the order of detention is also required to be quashed and set aside on the ground that it lacks application of mind as the petitioner was enlarged on regular bail

on 09.10.2023 and on the very day, the order of detention has been passed based on the grounds of detention supported by a voluminous record of documents and it is impossible for the detaining authority to undertake scrutiny of each and every documents, and thereafter, arrived at a subjective satisfaction.

5. Lastly learned advocate submitted that the petitioner has been enlarged on regular bail by the court of appropriate jurisdiction on the very next day of his arrest, and therefore, the detaining authority ought to have taken steps for cancellation of bail. Reliance is placed upon the decision of the Hon'ble Apex Court in the case of Shaik Nazeen v/s. State of Telanga and Ors and Syed Sabeena v/s. State of Telangana and Ors. reported in 2023(9) SCC-633.

6. Learned A.G.P. objecting to the grant of the petition submitted that the detaining authority has correctly relied upon the two offences registered against the petitioner at Karelibaug Police Station and Raopura Police Station and his activity is disturbing the even tempo of life, particularly, when over and above the two offences mentioned in the grounds of detention, there are total four other offences including an offence under the provisions of Prevention of Gambling Act.

7. Having heard learned advocates for the parties and having perused the documents on record, the petitioner has been detained as a dangerous person by the impugned order of detention dated

09.10.2023 passed by the detaining authority -Commissioner of Police, City Vadodara.

8. The detaining authority has relied upon two offences registered at Karelibaug Police Station and Raopura Police Station respectively, the details of which are as under;

Sr No	Name of police station and Crime register number and date	Sections	Date of arrest	Date of releasing on bail
1	Karelibaug Police Station Part-A CR No. 11196027230442 of 2023 Dt.05.10.2023	Sections 325, 323, 294(B), 114 of the Indian Penal Code and Section 135 of the G.P.Act	08.10.2023	09.10.2023
2	Raopura Police Station Part-A CR No. 11196026230470 of 2023 Dt.05.10.2023	Sections 143, 147, 149, 323, 294(B) of the Indian Penal Code, Section 135(1) of the G.P.Act and Section 3(1) of the Public Property Damages Act	05.10.2023	07.10.2023

9. The perusal of the aforesaid details would indicate that in connection with the first offence registered at Raopura Police Station, the petitioner was arrested on 05.10.2023 and released on bail on 07.10.2023 whereas in the second offence registered at Karelibaug police station, he was arrested on 08.10.2023 and enlarged on bail on 09.10.2023 ie., immediately the next day of his arrest. There is no material to indicate that either the sponsoring authority or the detaining authority have resorted to any other remedy available in the form of cancellation of bail or objecting to the grant of bail in the subsequent offence.

10. In recent decision of the Hon'ble Supreme Court in the case

of **Shaik Nazeen v/s. State of Telanga and Ors and Syed Sabeena v/s. State of Telangana and Ors.** reported in 2023(9) SCC-633, the Hon'ble Supreme Court has made following observations in para 19 :-

“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”.

11. The court finds that there is no application of mind to the fact that the petitioner, who has been enlarged on regular bail, would indulge into similar kind of offences after having been enlarged on regular bail, and therefore, the subjective satisfaction to that extent would stand vitiated.

12. The court has also taken into consideration the contents of the FIR and it is evident that the first FIR, which was registered with the Karelibaug Police Station was an outcome of a private dispute between the known persons, and thereafter, as an offshoot, a subsequent FIR came to be registered at Raopura Police Station, and therefore, though the two FIRs are registered, they are interconnected, and therefore, it cannot be said that the petitioner is a habitual offender covered under the definition of dangerous person as contemplated by Section 2(c) of PASA.

13. The court has also taken into consideration the fact that the petitioner was enlarged on bail in the offence registered at

Karelibaug Police Station on 09.10.2023 and on the same day, the order of detention is passed and the petitioner has been detained. Along with the grounds of detention, several documents are annexed and placed on record, however, the exercise of going through these entire documents and arriving at a subjective satisfaction appears to be undertaken mechanically by the detaining authority. Hence also, the subjective satisfaction of the detaining authority would stand vitiated.

14. 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.

15. In the result, this Special Civil Application is allowed. The impugned order of detention dated 09.10.2023 passed by the respondent authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case.

Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

K. S. DARJI