IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17335 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE Sd/-

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE 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**

==========

VIJAY @ ANKIT KAILASHBHAI SARGARA (MARWADI)
Versus
STATE OF GUJARAT

==========

Appearance:
MR MR PRAJAPATI(1532) for the Petitioner(s) No. 1
MR SATISH R PATEL(650) for the Petitioner(s) No. 1
MR PRANAV DHAGAT, 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
SERVED BY RPAD (R) for the Respondent(s) No. 2

==========

CORAM: **HONOURABLE MR. JUSTICE A.Y. KOGJE**
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 22/01/2024

ORAL JUDGMENT

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

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

> "(A) Your Lordships be pleased to issue writ of Habeas Corpus or any other apparatus writ order or direction and be pleased to quash and set aside the order of detention dated 06.09.2023 passed by the respondent no.2 vide no.PCB/PASA/DTB /156 /2023 (Ann B) under the provision of the Gujarat Prevention of Anti-Social Activities Act, 1985 as being illegal, invalid, null and void, arbitrary, suffers from total non application of mind and violative of Art. 14, 19, 21 and 22 of the Constitution of India;"

2. Thus, essentially, the challenge is to the order of detention dated 06.09.2023 passed by the Police Commissioner, Vadodara, respondent No.2 herein, by which the petitioner has been detained as a "dangerous person" based on two offences 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	Karelibaug Police Station, Vadodara	11196027230354 of 2023 dated 23.06.2023	379(A)(3) and 114 of IPC	05.09.2023
2	Fatehgunj Police Station, Vadodara	11196012220196 of 2022 dated 22.02.2022	379 and 114 of IPC	13.03.2022

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

3.1 It is submitted that the offences are pertaining theft of golden articles and vehicles 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.

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 golden articles and 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 vehicle of which theft was committed. The two FIRs registered against the petitioner are under Chapter-16 and 17 of 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 there is no live link between the offences as the first offence was committed on 12.03.2022 and the petitioner was enlarged on 13.03.2022 and the second offence was committed on 03.07.2023 and the petitioner was enlarged on 05.09.2023.

6. It also 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 and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a 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. In this connection, it will be fruitful to refer to a decision of the Supreme Court in ***Pushker Mukherjee Vs. 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 offences in which the petitioner is involved, are of theft 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.

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 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**. rendered in **Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 2022** dated 22.06.2022, the Hon'ble Supreme Court has made following observations in para 17 as under:-

> "17. 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."

9. One more aspect which requires consideration is the subjective satisfaction arrived at by the detaining authority relying upon the statements of secret witnesses and concluding that the petitioner is such a headstrong person that nobody is ready and willing to go ahead and give adverse statement or file an FIR. Such a subjective satisfaction is vitiated on the ground that in connection with the offence registered against the petitioner, witnesses have given their statements and in these statements, details of the witnesses are also available. Therefore, subjective satisfaction of the detaining authority invoking of privilege under Section 9(2) of the Act stands vitiated.

10. 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.

11. 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.

12. In the result, the present petition is hereby allowed and the impugned order of detention dated 06.09.2023 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)

SHITOLE