

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18240 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

MANGESHBHAI JIVANTRAM FULWANI
Versus
COMMISSIONER OF POLICE & ORS.

Appearance:

MR SAMIR AFZAL KHAN(3733) for the Petitioner(s) No. 1
 MR YUVRAJ BRAHMBHATT, AGP for the Respondent(s) No. 2
 GOVERNMENT PLEADER 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 : 13/03/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. This petition under Article 226 of the Constitution of India is filed for the following reliefs:
 - (a) *be pleased to admit this Special Civil Application;*
 - (b) *be pleased to allow this Special Civil Application by issuing an appropriate writ of Habeas Corpus and or any other appropriate writ or direction quashing and setting aside the impugned order of detention at **Annexure-A** dt. 26.09.2023 passed by the respondent no.1 in the interest of justice.;*
 - (c) *Pending admission, hearing and till final disposal of this Special Civil Application, grant stay as to the further implementation, execution and operation of the impugned order of detention at **Annexure-A** dt. 26.09.2023 passed by the respondent no.1 in the interest of justice.*
 - (d) *xxx.. xxx... xxx;”*
2. The challenge is to the order of detention dated **26.09.2023** passed by the respondent- detaining authority viz. the Commissioner of Police, Surat City, 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.
3. Learned advocate for the petitioner challenging the order of detention has argued that though the detaining authority has relied upon three offences registered with Hajira Police Station, Jahangira Police Station and Ichhapor Police Station, but none of the offences are of a

nature where the public order appears to have been disturbed. It is submitted that all the three offences are arising out of private dispute with regards to the settlement of accounts in their trading business.

4. Learned advocate for the petitioner has submitted that the petitioner has been enlarged on regular bail in each of the the offences, whereas the detaining authority has taken into consideration the lesser drastic remedy available rather than passing the order of detention.
5. Learned advocate for the petitioner has lastly submitted that the order of detention has been passed on the very next day of his release on regular bail in connection with the last offence registered with Ichhapore Police Station and thereafter, the statement of secret witnesses were recorded on 25.09.2023, verified on 26.09.2023 and the order of detention was passed on the very same day. Therefore, the application of mind is made in mechanical manner to arrive at the subjective satisfaction.
6. As against that, learned AGP has objected to grant of the petition by submitting that the petitioner has committed three offences which are falling under Chapters 16 and 17 of the IPC and therefore, the detaining authority was justified in treating the petitioner as a 'dangerous person' as he was repeatedly indulging in such offences.

7. Learned AGP submitted that the detaining authority has also taken into consideration the aspect that the petitioner would continue to indulge in the similar offences as and when he enlarged on regular bail.

It is also submitted that the detaining authority has rightly relied upon the statement of the secret witnesses wherein it is indicated that over and above the offences registered against the petitioner, the petitioner is also indulging in such activities, which are amounting to disturbing the public order.

8. Having Considering the rival submissions of the parties and having perused the documents on record, the petitioner has been detained by the impugned order of detention dated 26.09.2023, where the grounds of detention would indicate that the detaining authority has relied upon three IPC offences, which are in tabular form given as under:

FIR No.	Name of Police Station	Offence	Date of offence	Date of Arrest	Date of order of Bail
1121000121 0854	Hajira	406, 420	24.11.2021	17.06.2022	17.06.2022
1121000722 0460	Jahangirpura	323, 504, 506(2)	02.11.2022	08.06.2023	08.06.2023
1121001923 0253	Ichhapore	332, 504, 114	18.03.2023	20.03.2023	25.09.2023

9. The Court has taken into consideration the fact that the first offence registered at Hajira police station is of 24.11.2021. The second offence is registered at

Jahangirpura Police Station on 02.11.2022 and the last offences at Ichhapore police station is registered on 18.03.2022 and therefore, the time period between all the three offences appears to be approximately one year. Therefore, the live-link between the three offences appears to have been snapped so as to treating the petitioner as habitually committing the offence and therefore be treated as 'dangerous person'.

10. The Court has taken into consideration from the record the nature of offence in which the petitioner has been arraigned from the FIRs annexed alongwith the grounds of detention. In each of the FIR, it is coming out that the dispute was of private nature, where the issue was with regard to the settlement of account regarding supply of the material (base oil) between the complainant and the accused person, whereas the last offence registered at Ichhapore police station, there is no attribute to the petitioner, but the assault has been attributed to the co-accused even the issue there also was with regard to settlement of account.
11. The Hon'ble Supreme Court in the case of ***Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852]***, has described the incidents where where the public order can be said to have been breached, whereas in the present facts of the case, as it is apparent that the offences are the result of individual dispute and therefore would not affect the public order. The Hon'ble Supreme

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."

12. The Court has also taken in to consideration the fact that the petitioner was arrested on 20.03.2023 and released on regular bail on 25.09.2023 in the last offence and thereafter, the order of detention was passed on 26.09.2023 and therefore, the order of detention is passed on the very next day of the order of bail. In the meantime, the sponsoring authority has recorded the statement of the secret witnesses on 25.09.2023 and verification was

carried out by the detaining authority on 26.09.2023 and immediately thereafter, the order of detention has been passed. In the opinion of the Court, the chronology of events would not indicate the application of mind to the record, rather a mechanical exercise of power which is placed by the sponsoring authority before the detaining authority, as the recording of secret witness statement and its verification was done on the very same day as that of the passing of the order of detention.

13. The Court has lastly taken into consideration the fact that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction, which aspect has not been considered by the detaining authority as there is no reflection to the application of mind that the detaining authority has resorted to the lesser drastic remedy of canceling the bail granted to the petitioner before passing the order of detention and therefore, as is held by 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 17:-

"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."

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, the present petition is hereby allowed and the impugned order of detention dated **26.09.2023** passed by the respondent – detaining authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case.
16. Rule is made absolute accordingly. Direct service is permitted.

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

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR