

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18707 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

AIYUBHUSSAIN AARIFHUSSAIN KURESHI

Versus

STATE OF GUJARAT & ORS.

Appearance:

O I PATHAN(7684) for the Petitioner(s) No. 1

MR. ROHAN RAVAL, AGP, for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3

CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 04/03/2024

ORAL JUDGMENT

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

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

“(A) YOUR LORDSHIP be pleased to issue appropriate

writ, order or directions of this Hon'ble High Court, quashing and setting aside the detention order dated 22/09/2023 at Annexure 'A' to the petition placing the petitioner under preventive detention, in purported exercise of their powers under the Gujarat Prevention of Antisocial Activities act, 1985, as being illegal, null and void and further be pleased to released the petitioner forthwith."

2. The challenge is to the order of detention dated 22.09.2023 by the detaining authority namely Commissioner of Police, City Ahmedabad, by which the petitioner has been detained as a "dangerous person" based on two offences registered against him.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that the incidents which are referred to in the FIR are arising out of the private dispute and has no bearing on public order. Learned advocate has also argued that though the petitioner was enlarged on regular bail by the Court of appropriate jurisdiction, the detaining authority has not resorted to the lesser drastic remedy and therefore, the order of detention is against the ratio of the Apex Court in case of **Shaik Nazeen v/s. State of Telanga and Ors.**, reported in **2023 (9) SCC 633**. It also argued that from the record that the order of detention is passed the very next day when the petitioner was enlarged on regular bail and therefore, the subjective satisfaction appears to have been arrived at in a mechanical manner.

4. As against this, learned Assistant Government Pleader by objecting the petition submitted that prior hereto also on two occasions, in the year 2021 and 2022, the petitioner was detained as a dangerous person and even after the indulgence shown by this Court, the petitioner has not meant his ways and has continued to indulge in the IPC offenses and therefore, the detaining authority was left with no choice, but to pass the order of detention.

5. In rejoinder, learned advocate submitted that the detention orders have been quashed by this Court by an order in Special Civil Application No.21574 of 2022 vide order dated 10.11.2022 and therefore, the detaining authority ought to have taken into consideration the subsequent development as well as it is relevant for the purpose of subjective satisfaction.

6. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has challenged the order of detention dated 22.09.2023 passed by the detaining authority-Commissioner of Police, City Ahmedabad by relying upon two offences registered with Shaherkotda Police Station, detaining the petitioner as dangerous person. The details of the offenses on which the detaining authority has relied upon are in tabular form as under:-

Sr. No	Name of Police Station Date	Sections	Date of Arrest and bail order
1	Shaherkotda Police Station C.R.No.11191041230227/23 09.03.2023	324, 323, 294B, 506(2) and 114 of the IPC and 135(1) of the GP Act	30.03.2023 30.03.2023
2	Shaherkotda Police Station C.R.No.11191041230894/23 21.09.2023	324, 323, 294B, 506(2) and 114 of the IPC and 135(1) of the GP Act	21.09.2023 21.09.2023

7. The Court has taken into consideration the contents of the FIR relied upon by the detaining authority and the detail would reveal that the FIR is an outcome of a private dispute between the petitioner and the complainant on the issue of making payment of food purchased by the petitioner. In another offense relied upon by the detaining authority again between the petitioner and the complainant, an verbal altercation had taken place at the place where the post death ceremony was taking place and at that place scuffle took place resulting into registration of the FIR.

8. In the opinion of the Court, both the incidents are private in nature where the petitioner and the complainant knew each other

from beginning and had committed the offense by assaulting the complainant. In the opinion of the Court, therefore, such action would not affect the even tempo of life so as to result in breach of public order, but appears to be the case of law and order which can be taken care off by the concerned police station by resorting to the alternative available in the ordinary laws. In this connection, it will be fruitful to refer to a decision of the Supreme Court in ***Pushker Mukherjee v/s. 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.”

9. The Court has taken into consideration the fact that the petitioner was released in the first offense on 30.3.2023 and thereafter, was arraigned as an accused in the second offense on

21.09.2023 however, the sponsoring authority is the same as the investigating agency still when the petitioner was considered for bail in the second offense by the Court of appropriate jurisdiction, there does not appear to be any effort made by the sponsoring authority objecting to the grant of bail or any procedure adopted for cancellation of bail.

10. In view of the above, as is held by the Supreme Court in recent decision in the case of **Shaik Nazeen (supra)**, 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 detinue 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. 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.

12. 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.

13. In the result, the present petition is hereby ***allowed*** and the impugned order of detention dated 22.09.2023 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.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH