

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21063 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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**MOHMAD NAJIM S/O MOHMAD NANHE SHAIKH THROUGH FATHER
NANHEN DANGER KALLU MOHMMAD**

Versus**THE STATE OF GUJARAT**

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Appearance:

**MR AN PATHAN FOR MS TASNIM A ZABUAWALA(10756) for the
Petitioner(s) No. 1**

MR SIDDHARTH RAMI, AGP 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 : 15/02/2024****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 a writ in the nature of mandamus or any other appropriate, writ, order or direction, quashing and set aside the impugned detention order No. PCB/PASA/DTN/771/2023 dated 15.09.2023 and the respondents be directed to set the petitioner at liberty forthwith, in interest of justice;
- b) Your Lordships may be pleased to release the petitioner from detention pending the admission, hearing and final disposal of this petition;
- c) Your Lordships may be pleased to dispense with filing of affidavit as the applicant is in jail.
- d) Your Lordships may be pleased to grant any other relief/s as may deem fit in the interest of justice.

2. The challenge is to the order dated 15.09.2023 where the petitioner has been detained as a Dangerous Person.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that the offence in which, the petitioner is involved is that of a private dispute, and therefore, would not amount to disturbance in public order.

3.1 It is further submitted that the other offence, on which, reliance is placed by the detaining authority is commission of theft of an air-conditioner, with which, there is no evidence to connect the petitioner as there is no recovery of the so called A.C. machine from the petitioner.

4. Learned advocate submitted that the petitioner has been released on regular bail by the court of competent jurisdiction, and therefore, without resorting to the lesser drastic remedy of cancellation of bail, the detaining authority has passed an order of detention.

5. Learned advocate has lastly submitted that both the statements of secret witnesses are recorded still there is no justification for invoking section 9(2) of PASA.

6. Learned A.G.P. has objected to the grant of the petition by submitting that the petitioner is involved in two offences of IPC falling in Chapter 16 and 17, and therefore, the definition of a dangerous person is clearly attracted.

7. Learned A.G.P. further submitted that the statements of secrete witnesses have also been recorded, which has been verified by the detaining authority and after having subjectively satisfied that the act attributed to the petitioner in those secret statements, the petitioner is responsible for disturbing the public order.

8. Having considered the rival submissions and having perused the documents on record, the petitioner has been detained by the impugned order of detention dated 15.09.2023 as dangerous person by the detaining authority namely Commissioner of Police, Surat City relying upon the two offences registered with Singanpore-Dabholi Police Station, the details of which in tabular form are given as under:

| Sr No | Name of police station and Crime register number and date | Sections | Date of arrest | Date of releasing on bail |
|-------|---|---|----------------|---------------------------|
| 1 | Singanpore-Dabholi Police Station Part A 11210063230482 of 2023 | 454, 457, 380, 114 of IPC | 04.08.2023 | 19.08.2023 |
| 2 | Singanpore-Dabholi Police Station Part A 11210063230601 of 2023 | 324, 504,, 506(2) of IPC and Section 135 of the G.P.Act | 11.09.2023 | 12.09.2023 |

9. The court has taken into consideration the nature of offences in which the petitioner is involved in the first being theft of Air Conditioner by house breaking, however, there is no evidence connecting the petitioner as the recovery of the Air Conditioner is not attributed to the petitioner.

9.1 In the second offence, it appears that the dispute is between the petitioner and the complainant, who were carrying out business of vegetables vending and out of their business rivalry, the incident has taken place, and therefore, in either of the offence, there does not appear to be any elements of disturbance in public order and as is held by the Apex Court in case of ***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.”

10. The court has taken into consideration the submissions of learned advocate with regards to the invoking of privilege under Section 9(2) of the PASA as the statements recorded by the sponsoring authority are on 14.09.2023, which came to be verified by the detaining authority on 15.09.2023 and on the very day ie., on 15.09.2023, the order of detention has been passed.

11. The court does not find anything in the order of detention to substantiate the invoking of privilege under Section 9(2) to maintain the secrecy of confidentiality of the witnesses, whose statements have been recorded under Section 9(2) as the date on which such statements have been recorded, there are other statements of the witnesses, who have given their statements in the offences which are registered, and therefore, in such statements,

there is full disclosure of the names and addresses of such witnesses, and therefore, there is no justification to invoking Section 9(2) therefore, the subjective satisfaction would stand vitiated.

12. The Division Bench of this Court in an unreported judgment in case of “***Vijay Alias Ballu Bharatbhai Ramanbhai Patni (Kaptiywala) vs State Of Gujarat***” in R/Letters Patent Appeal No. 454 of 2020 In R/Special Civil Application NO. 8091 of 2020 dated 31.08.2020 has dealt with this aspect of invoking Section 9(2) for not disclosing names of secret witnesses and after examining the law on the issue, has held as under in para 42:

42. In this view of the matter, the detaining authority while exercising powers under Section 9[2] of the PASA Act for claiming privilege is expected to consider the general background, character, antecedents, criminal tendency of propensity etc. of the detenu. In the instant case, if the grounds of detention are considered, all that is recorded by the detaining authority is that the fear expressed by the witnesses is found to be genuine and correct by the detaining authority. The detaining authority has recorded that it has carefully scrutinized, examined and considered all the materials that were produced before him by the sponsoring authority. It is, therefore, clear that the detaining authority, while verifying the statements of the witnesses and while considering the question of exercising the privilege under Section 9(2) of the PASA Act, has not taken any independent steps for considering general background, character, antecedents, criminal tendency etc. while recording subjective satisfaction, but has relied solely on the material produced by the sponsoring authority. There is no contemporaneous record to

indicate the steps taken by the detaining authority and the grounds and reasons for arriving at the subjective satisfaction. It is therefore very difficult to conclude that the detaining authority has considered general background, character, antecedents, criminal tendency and propensity etc. of the detenu while arriving at the subjective satisfaction, for the need for exercise of powers under Section 9(2) of the PASA Act and claim privilege by not disclosing identity of the anonymous witnesses.

13. 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.

14. In the result, this Special Civil Application is allowed. The impugned order of detention dated **15-09-2023** passed by the respondent 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)

K. S. DARJI