IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18882 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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GAURANG @ KANCHO NAGINBHAI VAGHELA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR ANIRUDH SUCHAK for MR P I PATHAN(11235) for the Petitioner(s) No. 1
MR PRANAV DHAGAT, AGP for the Respondent(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2
GOVERNMENT PLEADER for the Respondent(s) No. 3

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

Date : 20/02/2024

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:-

> "(B) That this Hon'ble Court be pleased to issue appropriate writ or directions to the respondents authority and quash and set aside the detention order passed by the respondent No.2 herein vide Number/ PCB/ DTN/ PASA/ 502/ 2023 dated 15.09.2023 (Annexure 'A') in the interest of justice."

2. Thus, essentially, the challenge is to the order of detention dated 15.09.2023 passed by Commissioner of Police, Ahmedabad, respondent No.2 herein, by which the petitioner has been detained as a "dangerous person" based on two offences registered against him.

3. Learned Advocate for the petitioner submitted that the order of detention is passed on the very next day on which the petitioner was enlarged on regular bail. It is submitted that in connection with the second offence registered against the petitioner with Ramol Police Station, the petitioner was enlarged on regular bail on 14.09.2023 and the order of detention is passed on 15.09.2023 and therefore, there was no sufficient time for the detaining authority to apply its mind to the documents placed before the detaining authority by the sponsoring authority to arrive at subjective satisfaction.

3.1 Learned Advocate for the petitioner submitted that the petitioner was enlarged on regular bail in each of the four offences and the detaining authority has not resorted to lesser drastic remedy.

3.2 It is submitted that the order of detention impugned in this petition also deserves to be quashed and set aside as registration of the offences under IPC Sections 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.

3.3 It is submitted that the offences are pertaining to bodily

injuries to 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 to commit the offences of bodily injuries 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.

3.4 It is submitted that the grounds of detention indicate that the detaining authority has referred to the two previous detention orders of 2018 and 2020 passed against the petitioner, however, has not referred to the orders passed by this Court in connection with these detention orders as this Court has quashed these detention orders by judgments and orders dated 23.01.2019 and 17.06.2021 in SCA Nos.18149 of 2018 and 7220 of 2021, respectively.

4. As against this, learned AGP submitted that the detaining authority had sufficient material on the record to pass the order of detention. It is submitted that the petitioner is indulging in similar offences since ling and that all the offences registered against the petitioner are falling 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

the grounds of detention indicate registration of four FIRs, the details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Ramol Station	11191024230754 of 2023 dated 05.07.2023	143, 144, 147, 148, 149, 294B, 506(2), 427 of IPC and 135(1) of GP Act	11.09.2023
2	Ramol Station	11191024230835 of 2023 dated 27.07.2023	143, 144, 147, 148, 149, 294B, 506(2), 427 of IPC and 135(1) of GP Act	14.09.2023

6. The aforesaid details thus would indicate that the petitioner was enlarged on regular bail in each of the offences by the Court of competent jurisdiction. However, there is nothing on record from the grounds of detention to indicate that the detaining authority before passing the order of detention applied its mind to other remedy available of cancellation of bail.

7. 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.

8. 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 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. As is held in the preceding paras, the offence in which the petitioner is involved, are against private individuals 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 State has not taken into consideration resorting to the procedure for cancellation of bail. Moreover, detention order does not indicate reflection of the detaining authority to possibility of cancellation of bail granted can be effective alternate to detention.

10. 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 Vs. State of Telanga & 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 detenue 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 15.09.2023 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.

14. Rule is made absolute accordingly.

Direct service is permitted.

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

Sd/-
(SAMIR J. DAVE,J)

SHITOLE