IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14258 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SALMAN @ KANNI NASIRBHAI NAGORI THROUGH NAGORI BILKISBANU NASIR KHAN

Versus

COMMISSIONER OF POLICE

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Appearance:
MR NISHITH P THAKKAR(2836) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 2
MR YUVRAJ BRAHMBHATT, ASST. GOVERNMENT PLEADER for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 1,2

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

Date : 15/01/2024

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

1. This petition under Article 226 of the Constitution of India is filed with 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 or any other appropriate writ or direction quashing and setting aside the impugned order of detention, at Annexure-A, dt. 02.08.2023 passed by the respondent No.1 in the interest of justice."

2. Essentially, the challenge is to the order of detention dated 02.08.2023 passed by the Commissioner of Police, City: Ahmedabad detaining the petitioner as a "dangerous person". The grounds of detention would indicate that the petitioner has been detained as a "dangerous person" on the basis of two IPC offences registered against the petitioner with Gaikwad Haveli Police Station.

3. Learned advocate for the petitioner submitted that the nature of offence, as is evident from the gist of the FIRs which is part of the record, would indicate that the FIRs are registered for offences which are arising out of private disputes

and therefore, it has nothing to do with the breach of "public order". Learned advocate submitted that the detention order does not refer to the order of externment, which was operational during which period the offences are alleged against the petitioner. However, the fact that the nature is of private dispute, the possibility of false involvement of the petitioner cannot be ruled out.

4. It is submitted that the first offence is arising out of a love affair of the petitioner with the complainant, because of which, the FIR came to be registered and the second offence is arising out of a private dispute between the Uncle of the petitioner and his father relating to some property. Therefore, in both the cases, considering the role of the petitioner, he has been enlarged on regular bail by the Court of competent jurisdiction despite facing the externment order.

5. Learned advocate further submitted that the offences which are listed in the grounds of detention are of the same Police Station, despite which, the petitioner has been enlarged on regular bail in connection with the two offences relied upon by the detaining authority and therefore, it was open for the sponsoring authority to resort to a lesser drastic remedy of cancellation of bail, which, the detaining authority has not taken into consideration. Therefore, the subjective satisfaction,

insofar as the breach of "public order" is concerned, is vitiated.

6. Learned AGP has objected to the grant of petition by submitting that the petitioner is a notorious person, against whom, there already exists an externment order. Despite the externment order being in operation, the petitioner has committed two other offences and thus, considering the habitual nature of the petitioner to commit offence and that too, offences which fall within Chapters – XV and XVI of IPC covered under the definition of "dangerous person" as contemplated under PASA, the order of detention is justified. Learned AGP has also submitted that considering the nature of offences against the petitioner prior to the order of detention and during the period of externment, the action of the detaining authority is justified as the detaining authority was left with no other option but, to resort to detention proceedings.

7. In rejoinder, learned advocate submitted that apart from the listing of seven offences against the petitioner, no other detail has been given with regard to such seven offences and thus, the sponsoring authority has not placed on record of the detaining authority all relevant materials with regard to the seven offences and merely to cause prejudice, has listed the

seven offences in the grounds of detention.

8. Having considered the rival submissions of the parties and having perused the documents on record, the petitioner has been detained as a "dangerous person" by the order of detention dated 02.08.2023 passed by the Commissioner of Police, City: Ahmedabad. The grounds of detention would indicate that the detaining authority has relied upon two IPC offences registered against the petitioner with Gaikwad Haveli Police Station, the details of which, in tabular form, are as under;

Sr No	Police Station, C.R. No. and Date	Section/s	Date of arrest and release on bail
1	Gaikwad Haveli Police Station C.R. No. 11191021230392 / 2023, dated 16.07.2023.	I.P.C. Sections 354(A)1, 354(D)2, 452, 294(b) and 506(2).	16.07.2023 18.07.2023
2	Gaikwad Haveli Police Station C.R. No. 11191021230439 / 2023, dated 29.07.2023.	I.P.C. Sections 294(b), 506(2) and 427.	30.07.2023 31.07.2023

9. The aforesaid table would indicate that in the first offence, the petitioner was arrested on 16.07.2023 and was enlarged on regular bail by the Court of competent jurisdiction on 18.07.2023. Similarly, in the second offence, the petitioner

was arrested on 30.07.2023 and was enlarged on regular bail on 31.07.2023. The order of externment being order No.117/2023 is dated 10.01.2023 and was executed on 20.01.2023. Therefore, even on the date of arrest of the petitioner in connection with the aforesaid two offences, the externment order was in operation. However, apparently, the order of bail does not indicate any reference to the order of externment and thereby, the sponsoring authority appears to have failed to bring the said fact to the notice of the concerned Court which granted bail to the petitioner. The sponsoring authority, having failed to resort to the lesser drastic remedy available of opposing the grant of bail on the ground of existence of the externment order, the subjective satisfaction arrived by it with regard to preventing the petitioner from commission of offence by the petitioner would stand vitiated. Not only that, even after the petitioner was enlarged on regular bail, the detaining authority had an option to resort to cancellation of bail given the long history which is mentioned in the order of detention. However, the detaining authority has failed to resort to the procedure of cancellation of bail and thus, there does not appear to be any application of mind on the part of the detaining authority on the adoption of letter drastic remedy of cancellation of bail before arriving at a subjective satisfaction.

10. The Apex Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors. and Syed Sabeena v/s. State of Telangana and Ors. rendered in Criminal Appeal No.908 of 2022 [@ SLP (Crl.) No.4260 of 2022] and Criminal Appeal No.909 of 2022 (@ SLP (Crl.) No.4283 of 2022 dated 22.06.2022**, has made the following observations in paragraph - 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."

11. The Court has taken into consideration the nature of offences which are mentioned in the grounds of detention and on which the detaining authority has placed reliance. The first offence appears to be arising out of a love affair between the petitioner and the complainant, where the petitioner is alleged to have held the hands of the complainant, for which the complaint came to be filed. The second offence is registered by the real Uncle of the petitioner and apparently, the object behind the filing of the second complaint lies in the property dispute between the father of the petitioner and his Uncle. Both these offences arise out of private disputes and will not be a reason of concern for disturbance of "public order". The

Court also finds that there does not appear to be statement of any secret witness, who supports the conclusion of the detaining authority that the petitioner is a "dangerous person", who indulges in anti-social activities so as to invoke the provisions of PASA.

12. The Apex Court while considering the aspect of public Order has elaborately discussed "public order" in case of ***Pushker Mukherjee v/s. State of West Bengal*** [AIR 1970 SC 852] has held as under;

> "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.”

13. The court may in this regards rely on the decision of Apex Court in the case of **Ameena Begum v/s. The State of Telegana & Ors.** reported in **2023 Live Law (SC) 743**, where the Apex Court has differentiated the use of the words “public order” and “law and order” and in paragraph-39, has held as under;

> “39. In fine, what we find is that the order of detention impugned in that writ petition failed to differentiate between offences which create a "law and order" situation and which prejudicially affect or tend to prejudicially affect "public order". The present Detention Order fares no better. Even if the offences referred to in the Detention Order, alleged to have been committed by the Detenu have led to the satisfaction being formed, still the same are separate and stray acts affecting private individuals and the repetition of similar such acts would not tend to affect the even flow of public life. The offence in respect of the minor girl did exercise our consideration for some time but we have noted that the Detenu was not arrested because of an order passed by the High Court on an application under section 438 of the Criminal Procedure Code ("Cr. PC", hereafter). The investigating agency not having elected to have such order quashed by a higher forum, the facts have their own tale to tell. Even otherwise, the gravity of the offences alleged in Arun Ghosh (supra) was higher in degree, yet, the same were not considered as affecting

> 'public order'. The only other offence that could attract the enumerated category of "acting in any manner prejudicial to the maintenance of public order" and an order of preventive detention, if at all, is the stray incident where the Detenu has been charged under section 353, IPC and where the police has not even contemplated an arrest under section 41 of the Cr. P.C.”

14. In view of above, we are inclined to allow this petition and accordingly, the present petition is allowed. The impugned order of detention dated 02.08.2023 passed by the respondent-authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

PRAVIN KARUNAN