

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17957 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 |

PREMAL @ CHAKO JAYANTIBHAI DULERA
Versus
POLICE COMMISSIONER

Appearance:**MR. NISARG D SHAH(7299) for the Petitioner(s) No. 1****SUNIL H PRAJAPATI(8350) for the Petitioner(s) No. 1****DS AFF.NOT FILED (R) for the Respondent(s) No. 2****MS JINAL ACHARYA, AGP for the Respondent(s) No. 3****RULE SERVED BY DS for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 05/02/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

1. This petition under Article 226 of the Constitution of India is filed with prayers as under:

“B) Allow this Special Civil Application by issuing a writ of Certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order of detention dated 08.09.2023 at **Annexure-A** passed by the Respondent No.1.”

2. Thus, essentially, the challenge is to the order of detention dated 08.09.2023 passed by the Police Commissioner, Surat, respondent No.2 herein, by which the petitioner has been detained under the provisions of PASA as sexual offender for “public order” based on solitary offence registered against him.

3. Learned Advocate for the petitioner submitted that a false case has been foisted upon the petitioner on account of matrimonial dispute between the petitioner and the mother of the victim with whom the petitioner has entered into second marriage (second marriage of mother of the victim).

3.1 Learned Advocate for the petitioner submitted that the offence for which the petitioner has been arraigned as an accused, he has been enlarged on regular bail the very next day the petitioner was arrested and thereafter, detention order has been passed. The sponsoring authority has not taken into consideration the aspect of resorting to lesser drastic remedy.

3.2 Learned Advocate for the petitioner submitted that the

offence is of the nature of private dispute arising out of matrimonial differences and therefore, cannot be termed to be an offence which has caused disturbance in public order.

4. Learned AGP for the respondent State has objected to the grant of petition by submitting that the offence is of serious nature where the petitioner is the step-father of the victim and therefore, on account of his immoral conduct, the detention order is justified.

5. Having heard learned advocates for the parties and having perused documents on record, it appears that the petitioner has been detained under PASA under order dated 08.09.2023, where grounds of detention indicate that the detaining authority has relied upon solitary offence, details of which are as under:-

| Sr. No. | Name of Police Station | CR No. and date | Sections | Date of bail order |
|---------|-------------------------|---|--|--------------------|
| 1 | Limbayat Police Station | 11210025233627 of 2023 dated 02.09.2023 | 354, 354A, 354B, 354C, 506, 509 and 511 of IPC | 05.09.2023 |

6. The record along with grounds of detention indicate that the offence was registered on 02.09.2023 for an incident which taken place on 19.08.2023, for which the petitioner was arrested on 04.09.2023 and enlarged on regular bail on 05.09.2023. The aforesaid choronoloty would indicate that the petitioner was

arrested and released within a span of one day and the sponsoring authority has not made any efforts for cancellation of bail. The only reasoning for subjective satisfaction is to the extent that the petitioner is on bail and therefore, is likely to affect modesty of women in the society. However, there does not appear to be any material for such conclusion.

7. It appears that the offence against the petitioner is a sporadic incident which has no antecedents and therefore, subjective satisfaction of the petitioner, upon being enlarged, would indulge in such antisocial activity, is on mere presumption.

8. The Supreme Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors.** rendered in **Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 2022** dated 22.06.2022, the Hon'ble Supreme Court has made following observations in para 17 as under:-

“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.”

9. The Court has also taken into consideration the nature of statements recorded of the witnesses and in each of such statements, it is apparent that the issue is a private dispute arising

out of the relation between the petitioner-step-father, victim-step-daughter and the complainant-wife, i.e. within the family and therefore, cannot be termed to be an offence which has disturbed 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.”

10. 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.

11. In the result, the present petition is hereby allowed and the impugned order of detention dated 08.09.2023 passed by the respondent – detaining authority is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if not required in any other case.

12. Rule is made absolute accordingly.

Direct service is permitted.

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

Sd/-
(SAMIR J. DAVE, J)

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