

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17278 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Sd/-**

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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**JAYANT @ GENDO BABUBHAI ISHVARBHAI PARMAR THROUGH
NITABEN BABUBHAI PARMAR
Versus
STATE OF GUJARAT**

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Appearance:

**MR MANOJ SHRIMALI(2331) for the Petitioner(s) No. 1
MR YUVRAJ BRAHMBHATT, AGP 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 : 23/01/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

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

“(a) This Hon’ble Court may be pleased to admit this petition;

(b) This Hon’ble Court may be pleased to issue a writ of mandamus or habeas corpus or appropriate writ, order or direction in the nature of mandamus or habeas corpus, quashing and setting the impugned order No.PCB/DTN/PASA/481/2023 dated 06.09.2023 passed by respondent no.2 Annexure-A and be further pleased to release the petitioner detenue,

(c) Pending admission, hearing and final disposal of the petition, be pleased to release the petitioner on bail on such terms and conditions as this Hon’ble Court may deem just and proper in the interest of justice”

(d) xxxx

2. The challenge is to the order of detention dated **06.09.2023** passed by the respondent – detaining authority viz. the Commissioner of Police, Ahmedabad City, in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short “the Act”) by detaining the petitioner – detenue as defined under section 2(c) of the Act.

3. Learned advocate for the detainee submits that the grounds of detention would indicate that detaining authority has relied upon three offences of IPC registered with Sahibaug Police Station and the time gap between all the three offences, is such the petitioner cannot be treated to be a habitual offender. It is submitted that the nature of offences are also such it can be considered to be affecting public order.
4. Learned Advocate has thereafter submitted that if the first offence registered against the petitioner is considered, then the order of detention is delayed by one year and if the last offence is considered, then from the date of his release, period of one month has passed after detention order is passed and hence, the delay is fatal to the detention order.
5. Learned AGP has objected to grant of the petition by submitting that the petitioner has been arraigned as an accused in three offences covered under chapters 16 and 17 of the IPC, thereby falling within the definition of 'Dangerous Person'. It is submitted that the detaining authority in its order has expressed subjective satisfaction that after taking into consideration the other lesser drastic remedy, the detaining authority was left with no other option but to pass the impugned order of detention.

6. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detinue indicate that detinue is in habit of indulging into the activity as defined under section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and detention order deserves to be upheld by this Court.
7. Having considered the rival submissions and considering the facts and circumstances of the case and perused the documents on record, the petitioner is detained as 'Dangerous Person' by order of detention dated 06.09.2023, wherein the grounds of detention would indicate that the detaining authority has relied upon three FIRs registered with Sahibaug Police Station, Ahmedabad. The details of which in tabular form are as under:

FIR No.	Name of Police Station	Offence	Date of Arrest	Date of order of Bail
11191031220746/2022	Sahibaug, Ahmedabad	323, 342, 294B, 506(2) and 114 of IPC and 135(1) of G.P. Act.	05.08.2022	06.08.2022
11191031230031/2023	Sahibaug, Ahmedabad	323, 324, 294B, 506(2)	15.03.2023	15.03.2023

		and 114 of IPC and 135(1) of G.P. Act.		
11191031230822/ 2023	Sahibaug, Ahmedabad	323, 294B, 506(1) and 114 of IPC.	08.08.2023	08.08.2023

8. The aforesaid details of chronology would indicate that the first offence was registered on 30.07.2022, for which the petitioner was arrested on 05.08.2022 and was enlarged on bail on 06.08.2022, whereas the second offence registered on 15.01.2023, for which the petitioner was arrested on 15.03.2023 and was released on bail on the very same day. The last offence was reported on 08.08.2023 in which the petitioner was arrested on 08.08.2023 and was released on very same day.

The aforesaid chronology would indicate that there is a substantial time gap between two offences and therefore, live link between two offences are not established to treat the petitioner as habitual offender.

9. It would be appropriate to observe that there are no statements of the secret witnesses, which would filling the gap between two offences to enable the detaining authority to conclude that the petitioner is continuously indulging in the offences.

10. The date on which the petitioner was lastly released on regular bail was 08.08.2023 and it is after a period of one month i.e. on 06.09.2023, the order of detention came to be passed against the petitioner and therefore, there is delay of one month in passing the order of detention. Such delay is neither explained by the detaining authority in its order nor by any substantive affidavit and therefore, in the opinion of the Court, the delay would be fatal to the detention of the petitioner.
11. The detention order does not indicate that the detaining authority has applied its mind to the lesser drastic remedy available like the procedure for cancellation of bail granted to the petitioner as in the first offence, the petitioner was granted the bail in the month of August, 2022 and he was arrested in the second offence only on 15.03.2022. Despite this, there is no process adopted by the detaining authority for cancellation of bail.
12. The Court has also taken into consideration the fact that the petitioner has been enlarged by the Court of proper jurisdiction where the option of alternative remedy of cancellation of bail was available to the sponsoring authority, which the sponsoring authority has not resorted to and hence, as is held in recent decision of the

Hon'ble Supreme 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 (CrI.) No.4260 of 2022 and Criminal Appeal No.909 of 2022 (@ SLP (CrI.) No.4283 of 2022 dated 22.06.2022, the Hon'ble Supreme Court has made following observations in para 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.”

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, the present petition is hereby allowed and the impugned order of detention dated **06.09.2023** 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.

15. Rule is made absolute accordingly. Direct service is permitted.

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

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR