

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16873 of 2023**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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 ?	

AKASH @ RAJA SHYAMKUMAR CHATURVEDI THROUGH ROHAN
SHYAMKUMAR CHATURVEDI
Versus
COMMISSIONER OF POLICE, AHMEDABAD CITY

Appearance:

MR SANJAY PRAJAPATI(3227) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 2
MR JEENAL ACHARYA AGP for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 1,2

**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 under Article 226 of the Constitution of India is filed for the following reliefs;

“(A) Your Lordships be pleased to kindly admit and allow this petition.

(B) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the impugned order of detention dated 06.09.2023 passed by the respondent No.1 at Annexure-A herein and further Your Lordships be pleased to issue a writ of habeas corpus or any other appropriate writ directing the respondent authority to release the petitioner detenu forthwith from detention.”

2. Learned advocate for the petitioner submitted that though the grounds of detention indicate that the detaining authority has relied upon three IPC offences; however, the gap between the said three offences are of more than four months and therefore, it cannot be said that the petitioner has continuously indulged in the offence.

3. Learned advocate submitted that the petitioner was enlarged on regular bail in the month of July 2023, but the detention order was passed in the month of September 2023 and therefore, there is a delay of almost two months in the

passing of the order of detention, which is fatal to the order of detention.

4. Learned advocate lastly submitted that though the lesser drastic remedy was available with the detaining authority; still, the detaining authority has not resorted to cancellation of bail.

5. Learned AGP has objected to the grant of petition and submitted that more than three IPC offences have been registered against the petitioner, which are covered under the Chapters mentioned in the definition clause of “dangerous person”, as contemplated under the PASA Act and therefore, the moment the petitioner is arraigned as an accused, the order of detention would stand justified.

6. Learned AGP has further submitted that previously also, the anti-social activities of the petitioner has come to the knowledge of the State and therefore, he was ordered to be extened in the years 2017 and 2019; still, the petitioner has continued to indulge in one offence or the other.

7. 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 impugned order of detention dated 06.09.2023 passed by the

Commissioner of Police, Ahmedabad City. The grounds of detention would indicate that the detaining authority has relied upon three offences registered against the petitioner, the details of which, in tabular form, are as under;

Sr No	Police Station, C.R. No., Date	Section/s	Date of Arrest / Date of release on bail
1	Bapunagar Police Station C.R. No.11191007220811 / 2022, Date: 16.10.2022	Sections 323, 294(b), 506(1) and 114 of IPC.	17.10.2022 / 18.10.2022
2	Bapunagar Police Station C.R. No.11191007220939 / 2022, Date: 26.11.2022	Sections 324, 294(b), 506(2), 427 and 114 of IPC and section 135(1) of G.P. Act.	04.07.2023 / 06.07.2023
3	Bapunagar Police Station C.R. No.11191007230171 / 2022, Date: 19.03.2023	Sections 324, 323, 294(b) and 114 of IPC and section 135(1) of G.P. Act.	04.07.2023 / 06.07.2023

8. The aforesaid details would indicate that the first two offences relied upon by the detaining authority are reported in the months of October and November of 2022, whereas, the last offence was reported on 19.03.2023. In connection with the first offence of the year 2022, the petitioner was arrested on 17.10.2022 and released on bail on 18.10.2022, whereas, in connection with the offences at Sr. Nos. 2 & 3 above, the petitioner was arrested on 04.07.2023 and was enlarged on bail

on 06.07.2023.

9. The aforesaid chronology would indicate that after the release of the petitioner in the year 2022, it was open for the sponsoring authority to object to the bail of the petitioner in the second and third offences, as the sponsoring authority and the Police Station where the offences were registered, are the same. However, not only was there no effort to object to the bail of the petitioner but there also does not appear to be any application of mind to the fact that the detaining authority did consider the remedy of resorting to cancellation of bail and having concluded that such an alternate was not efficacious that the detention order came to be passed. In view of the aforesaid non-application of mind to the fact of cancellation of bail, the subjective satisfaction would stand vitiated.

10. Subjective satisfaction would stand vitiated, as is held in the recent decision of the Hon'ble 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, wherein, in paragraph-17, it has been observed 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.”

11. The Court has taken into consideration the date on which the petitioner came to be enlarged on regular bail, lastly, on 06.07.2023 and thereafter, it was only on 06.09.2023 that the detaining authority passed the impugned order and therefore, there is a gap of almost 60 days before the passing of the order of detention. Where the issue of public order is under consideration before the detaining authority, the detaining authority has to understand the propensity and has to act urgently. Whereas, in the facts of the present case, as is indicated, the period of two months has lapsed and that itself is fatal to the order of detention, particularly, when there is no explanation validly given in the order of detention nor there is any separate affidavit on record of the detaining authority explaining the delay.

12. The Apex Court in the case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 S.C. 4715** has observed as under;

“11. We are persuaded to allow this appeal on the following two grounds:

(i) Delay in passing the order of detention from the date

of proposal thereby snapping the "live and proximate link" between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.

(ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

DELAY IN PASSING THE ORDER OF DETENTION

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not

be recapitulated and recited. But it would suffice to refer to the decision of this Court in **Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403**, wherein the following observation is made:

"Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing."

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

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20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.”

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. Consequently, the impugned order of detention dated 06.09.2023 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