

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20646 of 2023****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

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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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CHANDAN S/O KARUNASHANKAR DUBEY
Versus
STATE OF GUJARAT

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Appearance:

MR. SURAJ A SHUKLA(7185) for the Petitioner(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 3
MR KRUTIK PARIKH, ASST GOVERNMENT PLEADER for the
Respondent(s) No. 1
RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 03/01/2024

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

1. This petition under Article 226 of the Constitution of India is filed essentially challenging an order of detention passed by the the detaining authority Commissioner of Police, Surat City on 14.08.2023 detaining the petitioner as a "Dangerous person" on the basis of two offences under the provisions of Indian Penal Code.

2. Learned advocate for the petitioner has taken this Court through the contentions of both the FIRs. So far as the first offence is concerned, petitioner is not named in FIR and there is no recovery effected or there is not test identification parade to connect the petitioner to the incident. Therefore, there is no direct evidence. Whereas, in the second offence the registration of which was result of private dispute between two individuals and there is no question of disturbance of public order.

2.1 Learned advocate submits that the first offence registered with Udhna Police Station was of the year 2022 and the second offence is of the year 2023 and therefore there is no live link between the two offences.

3. Learned AGP has objected to the petition by submitting that the offences registered against the petitioner are falling in the category as specified in the definition of 'Dangerous person' in PASA. In fact the gist of the offences registered against the petitioner and produced in the grounds of detention clearly indicates conduct of the petitioner being anti-social and thereby disturbing the public order. Therefore, the detention order is justified.

4. In rejoinder the learned advocate for the petitioner submitted that the statements of secret witnesses recorded cannot be relied upon as the subjective satisfaction of the detaining authority would stand vitiated wherein statement of the secret witnesses have not been supplied to the petitioner.

5. Having considered the rival submissions of the parties and having perused the documents on record, petitioner has been detained as Dangerous person by an order dated 14.08.2023 passed by the Surat Police Commissioner.

5.1 The grounds of detention indicates that the detaining authority has relied upon the two IPC offences registered against the petitioner. The details of which in tabular form are as under;

Sr. No.	Police Station FIR No. Sections	Date of offence	Arrested on	Released on bail on
1	Udhna Police Station C.R. No.11210047221673 393, 394, 294B of the IPC r.w. Section 135(1) of the GP Act	28.08.2022	29.08.2022	19.09.2022
2	Udhna Police Station C.R. No.11210047231737 324, 323, 504, 506(2) of the IPC r.w. Section 135(1) of GP Act	27.07.2023	04.08.2023	11.08.2023

5.2 Perusal of the aforesaid details of the offences would indicate that first offence reported on 28.08.2022 for which the accused was arrested on 29.08.2022 and was released on bail on 19.09.2022 whereas the second offence was reported on 27.07.2023 for which the petitioner was arrested on 04.08.2023 and released on bail on 11.08.2023 and therefore, there is time gap of approximately 11 months. In the opinion of the Court the time gap between two offences relied upon by the detaining authority snaps the live link, so as to issue an order of detention which is essential requirement. In this connection the Court may refer to and rely upon a decision in case of **Sushanta Kumar Banik v. State of Tripura** reported in AIR 2022 S.C. 4715 wherein the Court 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.

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.”

5.3 The detaining authority is expected to act with urgency where the detaining authority is satisfied that the petitioner is associated to such an activity which can be termed to be anti-social. In the present case, there is no explanation to delay and therefore, detention is vitiated.

5.4 The Court has taken into consideration the submissions of learned advocate with regards to invoking of Section 9(2) of the PASA in connection with the statement of secret witnesses recorded on 13.08.2023 and verified on 14.08.2023 by the authority. Such a subjective satisfaction is vitiated on the ground that in connection with the offence registered against the petitioner, witnesses have given their statements and in these statements, details of the witnesses are also available.

5.5 The [Division Bench of this Court in an unreported judgment in case of **Vijay Alias Ballu Bharatbhai Ramanbhai Patni \(Kaptiywala\) Vs. State of Gujarat in LPA No.454 of 2020**](#) dated 31.08.2020 has dealt with this aspect of invoking Section 9(2) for not disclosing names of secret witnesses and after examining the law on the issue, has held as under in para-42:-

“42 In this view of the matter, the detaining authority while exercising powers under Section 9[2] of the PASA Act for claiming privilege is expected to consider the general background, character, antecedents, criminal tendency of propensity etc. of the detenu. In the instant case, if the grounds of detention are considered, all that

is recorded by the detaining authority is that the fear expressed by the witnesses is found to be genuine and correct by the detaining authority. The detaining authority has recorded that it has carefully scrutinized, examined and considered all the materials that were produced before him by the sponsoring authority. It is, therefore, clear that the detaining authority, while verifying the statements of the witnesses and while considering the question of exercising the privilege under Section 9(2) of the PASA Act, has not taken any independent steps for considering general background, character, antecedents, criminal tendency etc. while recording subjective satisfaction, but has relied solely on the material produced by the sponsoring authority. There is no contemporaneous record to indicate the steps taken by the detaining authority and the grounds and reasons for arriving at the subjective satisfaction. It is therefore very difficult to conclude that the detaining authority has considered general background, character, antecedents, criminal tendency and propensity etc. of the detenu while arriving at the subjective satisfaction, for the need for exercise of powers under Section 9(2) of the PASA Act and claim privilege by not disclosing identity of the anonymous witnesses."

6. The Court has taken into consideration that petitioner was enlarged on bail in first offence on 19.09.2022 whereas in second offence petitioner was released on bail on 11.08.2023 and therefore when there was time gap of approximately One year after grant of bail in the first offence, the State had an option of resorting to the proceedings to the cancellation of bail. In the facts of the present case, there does not appears to be any procedures being initiated in that direction not only that in the impugned order of detention does not reflect application of mind to the fact that the detaining authority did considered the option of resorting to cancellation of bail and found sufficient reason to decide otherwise to pass the order of

detention.

6.1 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 (Crl.) No.4260 of 2022 and Criminal Appeal No.909 of 2022 (@ SLP (Crl.) 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.

7. 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.

8. In view of above, we are inclined to allow this petition, because simplicitor registration of FIRs by themselves 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.

9. In the result, the present petition is hereby allowed and the impugned order of detention dated **14.08.2023** 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. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

DRASHTI K. SHUKLA

(RAJENDRA M. SAREEN,J)