IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21732 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-
and
HONOURABLE MR. JUSTICE VIMAL K. VYAS 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

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SATYAMSING DHARMENDRASING SENGAR
Versus
THE STATE OF GUJARAT & ORS.

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Appearance:
MR O I PATHAN(7684) for the Petitioner(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) – STATE.

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE VIMAL K. VYAS

Date : 11/06/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE VIMAL K. VYAS)

1. The present petition is directed against the order of detention dated 13.12.2023 passed by the respondent –

detaining authority in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'), whereby the respondent - detaining authority has detained the petitioner - detenue as defined under Section 2(c) of the Act.

2. Heard the learned advocate appearing for the petitioner – detenue and learned APP appearing for the respondent – State.

3. Learned advocate for the petitioner - detenue submits that the impugned order of detention is required to be quashed and set-aside since the detaining authority has passed the order of detention solely on the ground of registration of three FIRs; (i) for the offences under Sections 325, 324, 323, 294B, 506(2), 114 of the Indian Penal Code and under Section 135(1) of the Gujarat Police Act; (ii) for the offences under Sections 323, 294B, 114 of the Indian Penal Code and under Section 135(1) of the Gujarat Police Act; and (iii) for the offences under Sections 143, 147, 148, 325, 324, 294B, 506(2) of the Indian Penal Code and under Section 135(1) of the Gujarat Police Act, respectively, and that by itself cannot bring the case of the petitioner - detenue within the purview of definition under Section 2(c) of the Act. Learned advocate for the petitioner – detenue further submitted that the illegal activities alleged to have been carried out or likely to be carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most it can be said to be a breach of law and order. Further, except the statements of the witnesses and the registration of the above FIRs, no other relevant and cogent material is on record which would show that the alleged anti-social activities of the petitioner - detenue fall

under the category of breach of public order. Learned advocate further submitted that it is not possible to hold, on the basis of the facts of the present case, that the activities of the petitioner - detenue with respect to the criminal cases had affected and disturbed the social fabric of the society, eventually which would become threat to the very existence of the normal and routine life of the people at large or that on the basis of the registration of criminal cases, the petitioner - detenue had put the entire social apparatus in disorder, making it difficult for the whole system to exist, as a system governed by rule of law, by disturbing the public order. It is also submitted that the detaining authority has also not applied its mind to the fact that the petitioner – detenue is released on bail in all the offences.

4. Learned APP for the respondent-State has supported the detention order passed by the detaining authority and has submitted that sufficient materials and evidences were found during the course of investigation and the same were even supplied to the petitioner – detenue, which indicate that the detenue is in the habit of indulging into activities 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 the same deserves to be upheld by this Court.

5. Having heard the learned advocates appearing for the respective parties and considering the documents and materials available on record, *prima facie*, it is found that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law, inasmuch as the offences alleged in the FIRs cannot have any bearing on the

public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations levelled against the petitioner - detenue cannot be said to be germane for the purpose of bringing the petitioner - detenue within the realm of the meaning of Section 2(c) of the Act. Unless and until there is some material to make out a case that the person has become a threat and menace to the society so as to disturb the whole tempo of the society and that all social apparatus goes in peril disturbing the public order at the instance of such person, in that circumstances, it cannot be said that the detenue is a person which would fall within the meaning of Section 2(c) of the Act. Except general statements, there is no other material on record which shows that the petitioner - detenue has acted in such a manner which has become dangerous to the public order.

6. At this juncture, we would like to put reliance upon certain case-laws of the Apex Court, wherein the Apex Court has crystalized the position of law.

6.1 In the case of ***Vijay Narain vs. State of Bihar, reported in 1984(3) S.C.C. 14***, the Apex Court asserted that when a person is enlarged on bail by a competent court, great caution should be exercised in scrutinizing the validity of an order of preventive detention, which is based on the same charge which is to be tried by the criminal court. It is also noticed by this Court that the order does not refer to any application for cancellation of bail having been filed by the State authorities.

6.2 In a recent decision of the Apex Court rendered in the case of ***Shaik Nazeen vs. State of Telanga and others and Syed Sabeena vs. State of Telangana and others*** [Criminal Appeal No.908 of 2022 arising out of SLP (Crl.) No.4260 of 2022 and Criminal Appeal No.909 of 2022 arising out of SLP (Crl.) No.4283 of 2022, decided on 22.06.2022], the Apex Court has made the following observations in paragraphs Nos.17 and 18, which read thus :

> *"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.*
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> *18. In fact, in a recent decision of this Court, the Court had to make an observation regarding the routine and unjustified use of the Preventive Detention Law in the State of Telangana. This has been done in the case of Mallada K. Sri Ram vs. The State of Telangana & Ors. 2022 6 SCALE 50, it was stated as under :*
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> > *"17. It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Apex Court and evaluate the fairness of the detention order against lawful standards.""*

6.3 The distinction between disturbance to 'law and order' and disturbance to 'public order' has been clearly settled by a Constitution Bench in the case of ***Ram Manohar Lohia Vs. State of Bihar, reported in AIR 1966 SC 740***. The Apex Court has held that every disorder does not meet the threshold of disturbance to public order unless it affects the community at large. The Constitution Bench held thus :

> *"51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression 'public order' take in every kind of disorders or only some of them ? The answer to this serves to distinguish 'public order' from 'law and order' because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1) (b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.*

52. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression 'maintenance of law and order' the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

6.4 In the case of ***Mallada K. Sri Ram vs. State of Telangana, reported in 2022 (6) Scale 50***, the Apex Court has observed as under :

"15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the 'maintenance of public order'. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the

exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law."

6.5 It will be fruitful to refer to a decision of the Apex Court in the case of ***Pushker Mukherjee vs. State of West Bengal, reported in 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."

7. In case of ***K.Nageswara Naidu vs. Collector and District***

Magistrate Kadapa, reported in 2012(13) SCC 585, the Apex Court has reiterated thus :

> *"4. After the aforesaid decision, the same issue again came up for consideration before a two-Judge Bench of this Court in Munagala Yadamma v. State of Andhra Pradesh and Ors., (2012) 2 SCC 386, where a similar order had been passed under the 1986 Act. In the said case, the detention order had been passed in regard to the detenu, who had been indulging in illicit distillation of liquor and the same submission was advanced on behalf of the State, that recourse to ordinary law would involve more time and would not be an effective deterrent in preventing a person from indulging in prejudicial activities. In the said decision while considering the decision, both in Rekha's case (supra) and Reddeiah 's ease (supra) and also in Yumman Ongbi Lemhi Leima's case (supra), it was held that the personal liberty of an individual is the most precious and prised right guaranteed under the Constitution in Part III thereof. It was observed that the State has been granted the power to curb such rights under criminal laws and also under the laws of preventive detention, which, therefore, are required to be exercised with due caution, as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. It was also observed that no doubt the offences alleged to have been committed by the Appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act. but such punishment would have to be awarded under the said laws and taking recourse to preventive detention laws would not be warranted. It had been emphasised that preventive detention involves detaining of a person without trial in order to prevent him/ her from committing certain types of offences, but such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes, which the detenu may have committed. It had also been observed that after all, preventive detention. in most cases, is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial."*

8. Thus, the Apex Court has emphasized that preventive detention involves detaining a person without the trial, in order to prevent him/her from committing certain types of offences, but such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating the crimes, which the detenue may have committed. It had also been observed that after all preventive detention, in most of the cases, is for a year only and cannot be used as an instrument to keep a person in perpetual custody without the trial.

9. It is well-settled that the freedom of human-being is supreme and the same cannot be curtailed or restricted unless the detention is extremely necessary and the activities of the detenue affect the 'public order'. While passing the detention orders, the authorities have to be mindful of the characteristic of Articles 21 and 22 of the Constitution of India. Article 22 cannot be read in isolation but must be read as an exception to Article 21, and such exception can apply only in rare and exceptional cases. The Apex Court and this Court have, time and again, articulated that the personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law.

10. In view of the above, we are inclined to allow this petition, because simplicitor registration of FIRs 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 the power under Section 3(1) of the Act.

11. In the result, the present petition is allowed and the impugned order of detention dated 13.12.2023 passed by the respondent – detaining authority is hereby quashed and set-aside. The petitioner - detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule made absolute to the aforesaid extent. Direct service is permitted.

(ILESH J. VORA, J.)

(VIMAL K. VYAS, J.)

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