

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 18547 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-****and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>No</b>
2	To be referred to the Reporter or not ?	<b>No</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>No</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>No</b>

DASHRATH @ DASHLO RAMESHJO THAKOR  
Versus  
STATE OF GUJARAT

Appearance:

MS VIRAL A DETROJA(12122) for the Petitioner(s) No. 1

for the Respondent(s) No. 3

MR YUVRAJ BRAHMBHATT, AGP for the Respondent(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2

**CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN****Date : 04/01/2024****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

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

“A. Your Lordship be pleased to Admit and allow this Special Civil Application be pleased to issue a

writ of Mandamus, order direction to the detaining authority to release the petitioner from the illegal detention.

B. Your Lordship be pleased to quash and set aside the order of detention passed by Respondent No.2 on dtd28/08/2023 vide PCB/PASA/DTN/454 / 2023 under the PASA Act.”

2. Thus, essentially, the challenge is to the order of detention dated 28.08.2023 passed by the Police Commissioner, Ahmedabad, respondent No.2 herein, by which the petitioner has been detained as a “dangerous person” on the basis of two FIR’s registered under the provisions of Indian Penal Code.

3. Learned advocate for the detainee submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of the offences under Sections 379 and 411 of IPC by itself cannot bring the case of the detainee within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detainee submits that illegal activity likely to be carried out or alleged to have been 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 breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detainee with breach of public order. Learned advocate for the petitioner further submits

that it is not possible to hold on the basis of the facts of the present case that activity of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large.

3.1 Learned advocate for the petitioner submitted that there is a delay of more than one and half months in passing the order of detention and therefore, the detention order itself is vitiated.

4. As against this, learned AGP submitted that the detaining authority had sufficient material on the record to pass the order of detention. Not only that, there are other supporting evidences also which the detaining authority has taken into consideration like drawing of panchnama. The two FIRs registered against the petitioner are under Chapter-16 and 17 of IPC, thereby attracting the ingredients of “dangerous person”.

6. Having considered the rival submission of both the sides and perused the documents on record, it appears that the petitioner has been detained in connection with the two offences by the detaining authority by relying upon two offences, the details of which are as under:

<b>Sr. No</b>	<b>Name of Police Station, FIR number and Sections</b>	<b>Date of registration of FIR</b>	<b>Date of release</b>
1	Ranip Police Station,	04.06.2023	21.06.2023

	Ahmedabad FIR No.11191002230160 of 2023, Sections 294B, 506(2) of IPC and Section 135(1) of the GP Act		
2	Ranip Police Station, Ahmedabad FIR No.11191002230200 of 2023, Sections 326, 324, 294B and 506(2) of IPC and Section 135(1) of the GP Act	21.06.2023	07.07.2023

7. The aforesaid detail would indicate that the petitioner was apprehended in the first offence which was registered on 04.06.2023 and was enlarged on 21.06.2023, whereas in the second offence the petitioner was registered on 21.06.2023, wherein the petitioner was enlarged on 07.07.2023 and thereafter the order of detention has been passed, which according to the Court is a delayed by more than one and half months. 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."

8. The Division Bench of this Court in an unreported

judgment 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.”

9. The State could have resorted to ordinary law by filing

cancellation of bail application and that would have been sufficient to prevent the petitioner from indulging in further offence, particularly when the petitioner has been granted bail in connection with the offence on which the detaining authority has relied upon to arrive at a subjective satisfaction.

10. 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.

11. In the result, the Special Civil Application is allowed. The impugned order of detention dated **28.08.2023** passed by the respondent-detaining authority is hereby quashed and set aside. The detainee 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/-  
(RAJENDRA M. SAREEN, J)

SHITOLE