IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17243 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE Sd/-

and
HONOURABLE MR. JUSTICE SAMIR J. DAVE 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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VASIM YUSUF NOBARA THROUGH HIS BROTHER MOHSINBHAI YUSUFBHAI NOBARA

Versus

THE COMMISSIONER OF POLICE

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Appearance:
MR ALTAFHUSEN I DUDHWALA(12126) for the Petitioner(s) No. 1
MR PRANAV DHAGAT, AGP for the Respondent(s) No. 2
SERVED BY RPAD (R) 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 : 18/01/2024

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 issue a writ of certiorari or any other appropriate writ, order and/or directions quashing and setting aside the detention order dated 05.09.2023 passed by respondent no.1 (Annexure-A to this petition) and further be pleased to direct the respondents to release the petitioner detenue from the detention forthwith.
>
> (b) Any other and further relief/s may kindly be granted in the interest of justice."

2. The challenge is to the order of detention dated **05.09.2023** passed by the respondent – detaining authority viz. the Commissioner of Police, Vadodara 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 detenue submits that the grounds of detention would indicate that detaining authority has relied upon two offences of IPC, however, none of the offences would indicate that the action of the petitioner were causing any breach of public order and therefore,

subjective satisfaction of the detaining authority hold that action of the petitioner is in breach of public order is vitiated.

4. Learned advocate for the petitioner submits that petitioner has been enlarged on regular bail by the Court of competent jurisdiction and therefore, the detaining authority had an alternative remedy to resort to ordinary law of cancellation of bail, however, instead of resorting to lesser drastic remedy, the order of detention has been passed.

5. Lastly, learned advocate for the petitioner submitted that the subjective satisfaction of the detaining authority will stand vitiated as immediately upon release of the petitioner on 04.09.2023, the detention order has been passed on 05.09.2023 and that there is no statement of secret witness recorded to justify the petitioner indulging in any activity damaging the public order.

6. Learned AGP has objected to grant of the petition by submitting that the petitioner has been arraigned as an accused in two cases covered under chapters 16 and 17 of the IPC, thereby falling within the definition of 'Dangerous Person'. Learned AGP further submits that the detaining authority has taken into consideration the aspect of delay and has recorded in the

detention order that as the petitioner has already been enlarged on regular bail and the procedure of cancellation of bail would consume more time, hence, the detaining authority deemed it fit to pass the order of detention.

7. 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 detenue indicate that detenue 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.

8. In rejoinder, learned advocate for the petitioner submits that FIRs registered against the petitioner and relied upon by the detaining authority are grossly delayed.

9. Having heard learned advocates for the parties and considering the facts and circumstances of the case and perused the documents on record, the detention order is passed on 05.09.2023, wherein the grounds of detention would indicate that the detaining authority has relied upon two FIRs registered with J.P. Road Police Station,

Vadodara. The details of which in tabular form are as under:

FIR No.	Name of Police Station	Offence	Date of offence	Date of Arrest	Date of order of Bail
11196008230251/2023	J. P. Road, Vadodara	324 and 114 of IPC and 135 of G.P. Act.	27.06.2023	26.08.2023	27.08.2023
11196008230331/2023	J. P. Road, Vadodara	406 and 420 of IPC	26.08.2023	29.08.2023	04.09.2023

10. The Court finds that in connection with the first FIR, the said FIR appears to be delayed by 7 days, whereas in the second FIR, the delay of registration of FIR after the alleged incident is of 1.5 years. In the opinion of the Court, where the initiation of offence on which the reliance is placed by the detaining authority itself belated. The delay would therefore be fatal to the detention order. The Court has also taken into consideration the nature of offence alleged against the petitioner in both the FIRs, wherein in the first offence the altercation took place between two individuals, whereas in the second offence, the issue was pertaining to sell and purchase of four-wheeler cars. In neither of the offence, it can be deemed that even tempo of life in the locality was disturbed causing breach of public order.

11. In this connection, it will be fruitful to refer to a decision of the Supreme Court in ***Pushker Mukherjee v/s. State of West Bengal*** [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."

12. Thus, the act attributed to the petitioner in the FIRs would not amount to damage to the public order.

13. 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 (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."

14. Lastly, the Court has taken into consideration the submissions of the learned Advocate for the petitioner that there was hardly any time for the detaining authority to apply its mind to the material placed before it by the sponsoring authority, particularly, as the petitioner was enlarged on bail on 04.09.2023 and immediately on second day i.e. on 05.09.2023, the order of detention has been passed. There is no indication as to the date on which the proposal was forwarded by the sponsoring authority to the detaining authority during which the detaining authority appears to have applied its mind to the material thus furnished.

15. 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.

16. In the result, the present petition is hereby allowed and the impugned order of detention dated **05.09.2023** 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.

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

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

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR