

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 2886 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE **Sd/-**
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE **Sd/-**

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-

ISMAILBHAI JORISNGH MANDOR THRO JORSINGHBHAI RAYJIBHAI
MANDOD
Versus
STATE OF GUJARAT & ORS.

Appearance:
TAHIR S SAIYED(8983) for the Petitioner(s) No. 1
MR ROHAN RAVAL, AGP for the Respondent(s) No. 1, 2 AND 3

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 06/05/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE SAMIR J. DAVE)

1. The present petition is directed against order of detention dated **26.10.2023** passed by the respondent – detaining authority 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 – detenu as defined under section 2(c) of the Act.
2. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of two offences under Sections 380, 457 and 114 of IPC by itself cannot bring the case of the detenu within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detenu 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 detenu with breach of public order.
3. 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 detenu 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 or that on the basis of criminal cases, the detenu had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. Learned advocate has raised the other grounds for quashment of detention order, but in view of a decision of the Supreme Court in *Pushker Mukherjee v/s. State of West Bengal* [AIR 1970 SC 852], even though the one ground is fake and the other grounds are not fake, the detention order has to be stroked out as not passed in accordance with law.

5. 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 detenu indicate that detenu 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.

6. Having heard learned advocates for 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 26.10.2023 passed by the detaining authority -Commissioner of Police, Vadodara City.

7. The detaining authority has relied upon two offences

registered at Chhani Police Station and Gotri Police Station respectively, the details of which are as under;

Sr No	Name of police station and Crime register number and date	Sections	Date of arrest	Date of releasing on bail
1	Chhani Police Station Part-A CR No. 11196005230461 of 2023	457, 380, 114 of the IPC	04.10.2023	21.10.2023
2	Gotri Police Station Part-A CR No. 11196004220902 of 2022	457, 380 and 114 of the IPC	06.10.2023	25.10.2023

8. The perusal of the aforesaid details would indicate that in connection with the first registered at Chhani Police Station, the petitioner was arrested on 04.10.2023 and released on bail on 21.10.2023 whereas in the second offence registered at Gotri police station, he was also released on bail on 25.10.2023.

9. It appears 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 FIR/s 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 as have been levelled against the detenu cannot be said to be germane for the purpose of bringing the detenu within the meaning of section 2(c) of the Act. Unless and until, the material is there 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

is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the public order. 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.”

10. The Court has also taken in to consideration the fact that the petitioner was arrested in the aforesaid second offence and released on bail on 25.10.2023, and thereafter, the order of detention was

passed on 26.10.2023 and therefore, the order of detention is passed on the very next day of the order of bail.

11. The Apex Court in the case of **Kalidas C. Kahar Vs. State of Gujarat and Ors.**, reported in **1989 Supple. II SCC 155**, has held that the detaining authority has to undertake a meaningful exercise and apply the mind to the documents placed alongwith the sponsoring proposal and then come to the conclusion by subjectively satisfying itself. Looking to objectively to the documents on record and conclude that the detention is the only option available to the petitioner, this exercise is not evident from either from the grounds of detention, the documents accompanying order of detention or any affidavit of the detaining authority in this regards.

12. The Court has 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** reported in **(2023) 9 SCC 633**, the Hon'ble Supreme Court has made following observations in para 19:-

“19. 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.”

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. In the result, this Special Civil Application is allowed. The impugned order of detention dated 26.10.2023 passed by the respondent authority is hereby quashed and set aside. The detenu 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)

(SAMIR J. DAVE,J)

K. S. DARJI