

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19623 of 2023

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

SURAJYAKANTI ALIAS URMILA UDAYNATH BARIK THROUGH HIS DAUGHTER MAMA
JENA MANAS RANJAN

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR MATAFER R PANDE(3952) for the Petitioner(s) No. 1

MR ROHAN RAVAL, AGP for the Respondent(s) No. 1

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

GOVERNMENT PLEADER for the Respondent(s) No. 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 A.Y. KOGJE)

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

“a) The Hon’ble Court may be pleased to issue a writ

of Habeas Corpus be issued, the order of detention may be quashed and set-aside, the respondents be directed to get Smt.Surajyakanti alias Urmila Udaynath Barik at liberty forthwith in connection to detention order passed by the Commissioner of Police, Surat, Order No.PCB /PASA /DTN /890 2023 Dated : 27/10/2023 (Annexure-A).

(b) & (c) xxx”

2. Thus, essentially, the challenge is to the order of detention dated 27.10.2023 passed by the Police Commissioner, Surat, respondent No.2 herein, by which the petitioner has been detained under the provisions of PASA for “public order” based on two offences registered against him, the details of which are as under:-

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of bail order
1	Amroli Police Station	11210004222382 of 2023 dated 11.11.2022	3, 4, 5, 7 of the Immoral Traffic Prevention Act and 370(A)(2) of IPC	01.02.2023
2	Amroli Police Station	11210004232308 of 2023 dated 10.10.2023	3, 5 and 7 of the Immoral Traffic Prevention Act	21.10.2023

3. Learned Advocate for the petitioner submits that the order of detention impugned in this petition deserves to be quashed and set aside as registration of offences under Sections of the Indian Penal Code and the Immoral Traffic (Prevention) Act, 1956

by itself cannot bring the case of the petitioner within the purview of definition under section 2(g) of the Act. Further, learned advocate for the petitioner 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 petitioner 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 petitioner 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 petitioner 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 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 petitioner indicate that petitioner is in habit of indulging into the activity as defined

under section 2(g) 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.

5. Having heard learned advocates for the parties and having perused documents on record, 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 petitioner cannot be said to be germane for the purpose of bringing the petitioner within the meaning of section 2(g) 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 petitioner is a person within the meaning of section 2(g) of the Act.

6. It also appears that the petitioner has been detained as "Immoral Traffic Offender" by the order of detention dated 28.08.2023 by the Police Commissioner, Surat City and along with the order of detention, wherein, the Detaining Authorities has

relied upon two offences. On perusal of the offences, it appears that the first offence registered on 11.11.2022, for which the petitioner was arrested on 12.11.2022 and enlarged on bail on 01.02.2023, whereas, the second offence was registered on 10.10.2023, wherein the petitioner was arrested on 10.10.2023 itself and was enlarged on 21.10.2023 and the order of detention came to be passed on 27.10.2023. Thus, there is a delay of 6 days in passing the order of detention.

7. The 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 as under:-

“19. In any case, the State is not without a remedy, as in case the detinue 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.”

8. 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."

9. The Court has taken into consideration the fact that the petitioner is a lady accused. Moreover, detaining authority alongwith the grounds of detention has referred to and relied upon the statements of secret witnesses. These statements were the part of the proposal made by the sponsoring authority and forwarded to the detaining authority where the detaining authority had recorded the verification with regard to the statements of the secret witnesses and thereafter immediately on the very day, the order of detention has been passed. In the opinion of the Court, the detaining authority did not have sufficient time to apply its mind to the record which is alongwith the grounds of detention

forwarded by the sponsoring authority, undertake the exercise of verification of the statements of the secret witnesses and immediately passed the order of detention. In absence of such subjective satisfaction, the order of detention is required to be quashed.

10. 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.

11. In the result, the present petition is hereby allowed and the impugned order of detention dated 27.10.2023 passed by the respondent – detaining authority is hereby quashed and set aside. The petitioner 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/-
(SAMIR J. DAVE,J)

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