

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2150 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-

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GHANSHYAM @DHAMO RAMESHBHAI PARMAR THRO MOTHER
SANTABEN RAMESHBHAI PARMAR
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR SHAIVAL M PATEL(9950) for the Petitioner(s) No. 1
 MR ROHAN RAVAL, A.G.P. for the Respondent(s) No. 1 TO 3

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

Date : 26/02/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

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

(A) This Hon'ble Court may be pleased to admit this Special Civil Application;

(B) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ of certiorari or any other appropriate writ, direction or order by quashing and setting aside the detention order dated 08.09.2023 passed by the respondent no.2 and further be pleased to direct the respondent authorities- Respondent no.3 to release the petitioner - detainee from the detention forthwith (Annexure-A)

(C) XXXX

(D) XXXX

2. Essentially, the challenge is to the order dated 08.09.2023 passed by the detaining authority-Commissioner of Police, Ahmedabad detaining the petitioner as the dangerous person.

3. Learned advocate for the petitioner submitted that the ground of detention would indicate that the detaining authority has relied upon three IPC offences registered at Amraiwadi Police Station. However, the nature of offence since registered against the petitioner are not of such nature that it would attract breach of public order.

4. Learned advocate submits that the very first offence is an outcome of an accident where the complainant was driving the truck had collided with an individual who was driving a cycle, because of which, the cyclist lost his life and at that stage, the mob

had got together and assaulted the truck driver wherein the petitioner was also part and therefore, such offence cannot be treated the offence which can amount to breach of public order. It is further submitted that the rest of two offences are also arising out of the private dispute, and therefore, has no concern with the public order.

5. Learned advocate submitted that the petitioner has been released on regular bail by the court of competent jurisdiction, and therefore, the detaining authority ought to have taken into consideration the lesser drastic remedy available.

6. Learned advocate submitted that there are no secret witness statements were recorded by the detaining authority to indicate that the petitioner has been consistently indulging in an activity which is amounting to the breach of public order.

7. As against this, learned advocate A.G.P. has objected to the grant of the petition by submitting that three offences registered against the petitioner are within the Chapter XVI and XVII of IPC and therefore, such actions would clearly attract the definition of the dangerous person as contemplated under PASA.

8. Having heard learned advocates for the parties and having perused documents on record, the petitioner has been detained under impugned order of detention dated 08.09.2023 by the Commissioner of Police, City Ahmedabad and the ground of detention would indicate that the detaining authority has relied

upon the following offences registered at Amraiwadi Police Station against the petitioner and others, details of which in tabular form are given as under:

Sr No	Name of police station and Crime register number and date	Sections	Date of arrest	Date of releasing on bail
1	Amraiwadi Police Station CR No. 11191004230428/ 2023 Date: 09.07.2023	Sections 143, 144, 147, 148, 149, 435, 323, 324, 294B of the IPC and Section 135(1) of the G.P.Act	19.08.2023	19.08.2023
2	Amraiwadi Police Station CR No. 11191004230544/ 2023 Date: 31.08.2023	Sections 323, 324, 294B, 506(2), 114 of the IPC and Section 135(1) of the G.P.Act	01.09.2023	01.09.2023
3	Amraiwadi Police Station CR No. 11191004230546/ 2023 Date: 31.08.2023	Sections 143, 147, 149, 323, 324, 337, 294B, 506(2) of IPC and Section 135(1) of the G.P.Act	01.09.2023	01.09.2023

9. The perusal of the aforesaid detail would indicate that the petitioner was enlarged in each of the offence by the court of competent jurisdiction lastly 01.09.2023, and thereafter, on 08.09.2023, the detention order has been passed. The detention order does not indicate application of mind by the detaining authority to the aspect that the lesser drastic remedy of cancellation of bail granted to the petitioner was sufficient to curtail the antisocial activities. The only satisfaction recorded is that the petitioner is put on bail and would likely to indulge in similar offence. However, as is held by the Hon'ble Apex Court in case of ***Shaik Nazeen Vs. State of Telanga and Ors*** and ***Syed Sabeena***

v/s. State of Telangana and Ors., [2023(9) SCC 633 (Para-19)], it is incumbent upon the detaining authority to take into consideration the lesser drastic remedy of cancellation of bail and having concluded that such lesser drastic remedy is not sufficient to curtail the activity of the detainee and the order of detention be passed.

10. The court has taken into consideration the submission of learned advocate with regards to the contents of each of the FIR wherein the first FIR on which the detaining authority has relied upon is arising out of an accident which took place in the vicinity and where the petitioner was a part of the mob which had assaulted the driver of the truck, which had caused the death of a cyclist. In the opinion of the court, such an act cannot be treated to be an act against in breach of public order. The other two offence also appears to be of private nature.

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. In view of the aforesaid and particularly, as there are no statements of secret witnesses, which would go on to indicate the nature of antisocial activities against the petitioners, 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.

13. In the result, this Special Civil Application is allowed. The impugned order of detention dated 08.09.2023 passed by the respondent authority is hereby quashed and set aside. The detenue 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