

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19001 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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DINESHBHAI @ LANGDO VARSINGBHAI MAAVI THRO RAMILABEN W/O
DINESHBHAI MAAVI
Versus
STATE OF GUJARAT & ORS.

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Appearance:**MR YASH K DAVE(10269) for the Petitioner(s) No. 1****VISHAL K ANANDJIWALA(7798) for the Petitioner(s) No. 1****MR YUVRAJ BRAHMBHATT, A.G.P. for the Respondent(s) No. 2**

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**and****HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 19/04/2024****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) Your Lordships be pleased to issue appropriate writ, direction or order of this Hon'ble Court quashing and setting aside the detention order dated 12.10.2023 at Annexure "A" to the petition placing the petitioner under preventive detention, in purported exercise of their powers under the Gujarat Prevention of Anti-Social Activities Act 1985, as being illegal, null and void and further be pleased to release the petitioner forthwith;

(B) xxx

(C) xxx

2. The challenge is to the impugned order of detention dated 12.10.2023 passed by the District Magistrate, Anand. The detailing authority has relied upon two offences under the Prohibition Act registered with Anand Rural Police Station.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that though the detaining authority has concluded that the activity of the petitioner in dealing with the prohibited liquor is dangerous for the public health but there is no evidence or material on the record to indicate that the public health on account of the activity of the petitioner has been damaged consequently committing breach of the public order.

4. Learned advocate for the detenue submits that 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 detainee 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 detainee 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.

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 detainee indicate that detainee is in habit of indulging into the activity as defined under section 2(b) 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. The State has chosen not to file counter affidavit/reply so as to disturb the action invoking provisions of the PASA Act.

6. Having heard learned advocates for the parties and having perused the documents on record, the petitioner has been detained as bootlegger by an order of detention dated 12.10.2023 by the District Magistrate, Anand and the grounds of detention would

indicate that the detaining authority has relied upon two offences registered with Anand Rural Police Station, details of which in tabular form 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	Anand Rural Police Station Prohi. CR No. 11215001230323 of 2023	Sections 65E, 116B, 81, 83 of the Prohibition Act	24.06.2023	01.07.2023
2	Anand Rural Police Station Prohi. CR No. 11215001230409 of 2023	Sections 65E, 116B, 81, 83 of the Prohibition Act	31.07.2023	05.08.2023

7. From the details as afore-stated it is apparent that the first offence registered at Anand Rural Police Station was in the month of June 2023, and thereafter, the second offence was registered at the same police station in the month of July 2023. The Court has taken into consideration the fact that the petitioner was enlarged on bail in the first offence on 01.07.2023 and in the second offence on 05.08.2023, whereas the sponsoring authority, ignoring the said fact, straightaway has initiated proceedings for preventive detention instead of proceedings for cancellation of bail. The detaining authority has expressed subjective satisfaction only on the ground that the petitioner if enlarged on bail will indulge into similar offence, and therefore, there is non-application of mind of the detaining authority to the lesser drastic remedy available to preclude the petitioner from indulging in any antisocial activity.

8. 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 detainee cannot be said to be germane for the purpose of bringing the detainee within the meaning of section 2(b) 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 detainee is a person within the meaning of section 2(b) of the Act. Except general statements, there is no material on record which shows that the detainee 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.”

9. 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.** 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”.

10. The co-detenu, who is also an accused in the present two offences relied upon by the detaining authority while passing the detention order against the present petitioner qua him, the petitioner had filed a separate petition, however, pending the petition, a communication was issued by the Home Department revoking the order of detention against such co-detenu. It is observed that against such co-detenu, there were three FIRs registered under the Prohibition Act which include the two FIRs wherein the petitioner has been arraigned as an accused. Reference be made to Special Civil Application No. 18990 of 2023 and the order passed therein.

11. 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.

12. In the result, this Special Civil Application is allowed. The impugned order of detention dated 12.10.2023 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