

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17701 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SHRI KRUNAL @ JADIYO @ MALIYO S/O SUSHILBHAI GOUDA
(GADHADA) THROUGH ANIL S/O KISHORCHANDRA DAKUA

Versus

STATE OF GUJARAT

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Appearance:

MR. KISHAN H DAIYA(6929) for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1MR YUVRAJ BRAHMBHATT, ASST. GOVERNMENT PLEADER for the
Respondent(s) No. 3

RULE SERVED BY DS 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 : 15/01/2024

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

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

“(A) That the Hon’ble Court may be pleased to admit this Special Civil Application.

(B) That this Hon’ble Court may be pleased to allow this present Special Civil Application by issuing appropriate writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention, Annexure-A, dated 01.09.2023 passed by respondent No.2.”

2. Essentially, the challenge is to the order of detention dated 01.09.2023 passed by the detaining authority, the Commissioner of Police, City: Surat, detaining the petitioner as a “dangerous person”.

3. Learned advocate for the petitioner submitted that the grounds of detention indicate that the petitioner has been detained as a “dangerous person” on the basis of two IPC offences registered against him with Amroli Police Station.

4. Learned advocate for the petitioner submitted that the

nature of offence in both the cases is such that it could be treated as a dispute between private individuals and will not have any effect on “public order”. It is submitted that the first offence was so trivial in nature that immediately after arrest, the police, on their own, enlarged the petitioner on bail on his personal bond and therefore, there is no question of disturbance of “public order” at the instance of the petitioner.

5. It is submitted that the second offence is arising out of a private dispute and the FIR so registered would indicate that at the root of the matter is an old dispute, approximately 1½ years old, and therefore, this also cannot be treated as an offence causing disturbance to “public order”.

6. Learned advocate submitted that in both the offences, the petitioner has been enlarged on bail, firstly, by the police and secondly, by the Court of competent jurisdiction. The detaining authority has not resorted to a lesser drastic remedy of cancellation of bail and therefore, the continuous detention is required to be quashed and set aside. Learned advocate submitted that there is no live link between the two offences and the time gap between the two offences is approximately five months.

7. Learned AGP has objected to the grant of petition by

submitting that the petitioner has been detained on the basis of two offences, which are covered under the Chapters mentioned in the definition clause of “dangerous person”, as contemplated under the PASA and therefore, the moment the petitioner is arraigned as an accused, the order of detention would stand justified. Learned AGP also submitted that previously also, i.e. in June 2022, the petitioner was detained under PASA. Despite this history, immediately after coming out of previous detention, the petitioner got indulged in yet another offence and therefore, the order of detention is required to be maintained.

8. In rejoinder, learned advocate submitted that such order of previous detention has been quashed by a reasoned order dated 30.08.2022 passed by this Court.

9. Having considered the rival submissions of the parties and having perused the documents on record, the petitioner has been detained as a “dangerous person” by impugned order of detention dated 01.09.2023 passed by the Commissioner of Police, City: Surat. The grounds of detention would indicate that the detaining authority has relied upon two IPC offences registered against the petitioner with Amroli Police Station, the details of which, in tabular form, are as under;

Sr No	Police Station, C.R. No. and Sections	Date of offence, Time	Date of arrest of accused, Time	Date when accused was enlarged on bail
1	Amroli – Part-A - 11210004230589, Sections 324, 323, 294(b), 506(2) and 114 of IPC.	Date: 21.03.23, Time: 00/30 hrs.	Date: 23.03.23, Time: 20/40 hrs.	Date: 24.03.23
2	Amroli – Part-A – 11210004231984, Sections 324, 323, 294(b), 506(2), 114 of IPC and section 135 of G.P. Act.	Date: 18.08.23, Time: 00/30 hrs.	Date: 18.08.23, Time: 14/30 hrs.	Date: 29.08.23

10. The chronology of events, as indicated in the aforesaid table, would show that the petitioner was arraigned as an accused in the first offence, which was reported on 21.03.2023 and in the second offence, on 08.08.2023. Therefore, between the first offence and the second offence, there is a time gap of approximately five months.

11. In the opinion of the Court, the live link between the two offences would be snapped so as to treat the petitioner as continuously indulging in commission of offences and thereby, treating him to be a habitual offender and a dangerous person.

12. Reliance can be placed upon the decision of this Court in

the case of **Jagdish v. State of Gujarat reported in 2023 SCC OnLine Guj 2659** wherein, the following observations have been made in paragraphs – 15 to 17 and 20;

“15. The Court has taken into consideration this fact that there is a long gap of one year between the registration of the offence and arrest of the petitioner and therefore, this delay and no activity in between would be fatal to the subjective satisfaction arrived at by the detaining authority.

16. The Court has taken into consideration the fact that the petitioner was enlarged on regular bail on 15.02.2023 and thereafter again there is a gap of 15 days before which, the detention order came to be passed on 04.03.2023.

17. Therefore, the cumulative effect of the offence being registered, date of arrest of the petitioner, the date on which the petitioner was enlarged on regular bail and the date of passing of the detention order, the Court is of the view that there is a delay in passing order of detention particular in absence of any anti-social activity in the interregnum period.

20. In the over all facts and circumstances of the case, 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 detenue cannot be said to be germane for the purpose of bringing the detenue 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 detainee 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 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.””

13. The Court has also taken into consideration the fact that in respect of both the offences registered at Amroli Police Station, where, in connection with the first offence, the petitioner was enlarged on bail at the Police Station itself on 24.03.2023 on the basis of his personal bond; and in the second offence, the petitioner was enlarged on bail by the Court of competent jurisdiction on 29.08.2023. However, both the offences were opposed by the sponsoring authority where the sponsoring authority has not resorted to the proceedings of cancellation of bail. Not only that the grounds of detention does not indicate any application of mind to the aspect that the detaining authority did consider the issue of cancellation of bail but has found it to be insufficient to curtail the so-called anti-social activities of the petitioner. The mere mention in the order of detention about the fact that the petitioner is on bail and is likely to indulge in anti-social activity will not be sufficient to satisfy the subjective satisfaction of the detaining authority in this regard.

14. The Court has also taken into consideration the contents of the two FIRs registered against the petitioner wherein, in

the first FIR, it appears that the FIR was registered on account of an incident that had taken place between and amongst the friends; and in the second FIR, it is evident that the FIR came to be registered on account of an altercation arising out of a previous dispute, which had taken place before about 1½ years. In both the aforesaid cases, it is apparent that no public order is involved and the dispute is between two parties.

15. The Apex 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, has made the following observations in paragraphs - 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.

16. As regards the submission of learned AGP that previously, i.e. in June 2022, an order of detention was passed against the petitioner. However, the order of detention itself indicates that the petitioner had preferred a petition before this Court and by

a reasoned order dated 30.08.2022, the order of detention has been quashed and set aside.

17. In view of above, we are inclined to allow this petition and accordingly, the present petition is allowed. The impugned order of detention dated 01.09.2023 passed by the respondent-authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

PRAVIN KARUNAN