

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18839 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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AMIT @ PALIT BALDEVBHAI CHAUHAN**Versus****COMMISSIONER OF POLICE AHMEDABAD CITY & ORS.**

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Appearance:**MR SANJAY PRAJAPATI(3227) 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 : 27/03/2024****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 kindly admit and allow this petition;

(B) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, directions and order quashing and setting aside the impugned order of detention dtd 04.10.2023, passed by the respondent no.1 at Annexure- “A” herein, and further your Lordships be pleased to issue a writ of habeas corpus or any other appropriate writ, directing the respondent authority to release the petitioner detainee forthwith from detention;

(C) XXXX

(D) XXXX

(E) XXXX

2. The challenge is to the impugned order of detention dated 04.10.2023 where detaining authority- Commissioner of Police, Ahmedabad City has detained the petitioner as a dangerous person relying upon two offences registered with Amraiwadi Police Station.

3. Learned advocate for the petitioner has challenged the order on the ground that the offences relied upon by the detaining authority are arising out of private dispute, and therefore, there is no element of breach of public order.

4. Learned advocate has submitted that the detaining authority has referred to and relied upon the previous orders of detention in the year 2016, 2017 and 2022, however, the detaining authority has not referred to the subsequent development, wherein all the aforesaid detention orders have been quashed and set aside by this court. Hence, the subjective satisfaction of the detaining authority is vitiated as there is no application of mind to the subsequent development to the previous detention.

5. Learned A.G.P. has objected to the grant of petition by submitting that the petitioner is shown an active participant in the two offences relied upon by the detaining authority, and therefore, the offence under Chapter XVI and XVII of Indian Penal Code, the act of the petitioner would clearly fall within definition of dangerous person hence, the detention order is justified.

6. It is submitted that the petitioner was previously also detained for his antisocial activity wherein this court had shown indulgence while quashing and setting aside the detention order but still the petitioner has continued to indulge in the similar antisocial activities, and therefore, detention order is justified.

7. Having considered the rival contentions of the parties and having perused the documents on record, the petitioner has been detained as a dangerous person by order of detention dated 04.10.2023 by detaining authority namely the Commissioner of Police, Ahmedabad City.

8. From the grounds of detention, the detaining authority has relied upon the two offences registered with Amraiwadi Police Station, details of which in tabular manner 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	Amraiwadi Police Station C.R. No. 11191004230383 of 2023 Dt. 13.06.2023	Sections 323, 324, 294B, 506(2) of IPC and Section 135(1) of the GP Act	21.09.2023	22.09.2023
2	Amraiwadi Police Station C.R. No. 11191004230404 of 2023 Dt. 25.06.2023	Sections 324, 435, 427, 294B, 114 of IPC and Section 135(1) of the GP Act	20.09.2023	21.09.2023

9. The chronology of the aforesaid two offences would indicate that the petitioner was arrested on 20.09.2023 in connection with the second offence in the aforesaid table, which was registered on 25.06.2023 and the petitioner was on the very next day released on regular bail on 21.09.2023.

9.1 The petitioner thereafter on 21.09.2023 was arrested in connection with the first offence of the table, which was registered on 13.06.2023 and the petitioner was released on bail on 22.09.2023.

9.2 The petitioner was, therefore, released on the very next day of his arrest by the court of competent jurisdiction, despite this, the sponsoring authority has not thought it fit to resort to either objecting to the grant of bail or resorting to cancellation of bail granted to the petitioner.

10. 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.

11. In view of the aforesaid fact, as the detaining authority before passing the order of detention has not applied its mind to the lesser drastic remedy of cancellation of bail, the detention order is required to be interfered with.

12. The Court has also taken into consideration the nature of offence and the role attributed to the petitioner in the FIR and the court finds that the offence is a result of the private dispute between the complainant and the petitioner, and therefore, the court does not consider this aspect to be of such a nature which would amount to breach of public order or disturbing the even tempo of life, and therefore, in the opinion of the court, the subjective satisfaction arrived at by the detaining authority is not in consonance with the principle laid down by the Apex Court in case of *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. Lastly, the court has taken into consideration the submission of learned advocate with regards to the previously orders of detention, which, in the grounds of detention, the detaining authority has referred to, however, there is no reference to the subsequent development as the detention order bearing No. 868 of 2022 was a subject matter of challenge in Special Civil Application No. 21984 of 2022 which came to be quashed and set aside by oral judgment dated 17.11.2022 passed by this court. In this regard

also, the subjective satisfaction of the detaining authority would stand vitiated.

14. 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.

15. In the result, this Special Civil Application is allowed. The impugned order of detention dated 04.10.2023 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