IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16441 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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ROKESH @ LOKESH CHANDRAKANT (CHHARA) THROUGH MOTHER GUMANE SOBHANA CHANDRAKANT

Versus

STATE OF GUJARAT

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Appearance:
SUNIL H PRAJAPATI(8350) for the Petitioner(s) No. 1
MR YUVRAJ BRAHMBHATT for the Respondent(s) No. 1

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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 is filed under Article 226 of the Constitution of India for the following relief:

"(a) Your Lordship be pleased to issue appropriate writ, order or directions of this Hon'ble High Court, for quashing and setting aside the Detention Order No.PCB/DTN/PASA/458/2023 dated 31.08.2023 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) YOUR LORDSHIPS be pleased to dispense with filing of affidavit in support of this petition as the facts are taken from records and also petitioner is in jail undergoing detention order in question.

(c) YOUR LORDSHIPS be pleased to release the petitioner from her detention, pending the admission, hearing and final disposal of this petition;

(d) YOUR LORDSHIPS be pleased to pass such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted."

2. The challenge is to the order of detention dated **31.08.2023** passed by the respondent – detaining authority viz. the Commissioner of Police, Ahmedabad City, in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the

Act") by detaining the petitioner – detenue as defined under section 2(b) of the Act on the basis of two offences registered with Sardarnagar Police Station under the provisions of the Gujarat Prohibition Act.

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground that two offences registered against the petitioner are parted by 9 months and therefore, there is no live link between the two offences as snapped so as to treat the petitioner as continuously indulging in the offences of prohibition to justify the order of detention.

4. Learned advocate for the petitioner submitted that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction in both the offences. However, the detaining authority has not taken into consideration lesser drastic remedy available of cancellation of bail and has proceeded to detain the petitioner as bootlegger.

5. Learned Advocate for the petitioner submitted that offences registered against the petitioner would not affect the public order as there is no documentary evidence on record to indicate that the consumption of prohibited liquor would cause

damage to the public health and consequently disturb the public order.

6. Learned AGP has objected to grant of petition by submitting that two offences are sufficient to treat the petitioner as active bootlegger and therefore, the order of detention is justified. Over and above aforesaid, on previous four occasions also, the petitioner has been detained under the provisions of PASA, still the petitioner is continued to indulge in similar activity and therefore, the detaining authority had no other option but to pass the impugned order of detention.

7. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that two offences are sufficient enough to treat the petitioner as active bootlegger and therefore, the order of detention is just and proper. He also submitted that as sufficient material and evidence was found during the course of investigation, which was also supplied to the detenue indicate that detenue 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.

8. Having heard learned advocates for the parties and considering the facts and circumstances of the case, the order of detention is dated 31.08.2023 by the Commissioner of Police, Ahmedabad City and the grounds of detention would indicate that detaining authority has relied upon two orders in tabular form, which are as under:

FIR No.	Name of Police Station	Offence	Date of offence	Date of Arrest	Date of order of Bail
11191040222196/2022	Sardarnagar	65(B), 65(A)(E), 116(B), 81, 98(2)	01.10.2022	13.10.2022	20.10.2022
11191040231643/2023	Sardarnagar	65(B), 65(A)(E), 116(B),	19.07.2023	09.08.2023	28.08.2023

The chronology of aforesaid tabular form would indicate that the first offence was registered with Sardarnagar Police Station on 01.10.2022, for which the petitioner was arrested on 13.10.2022 and was enlarged on regular bail on 20.10.2022.

The second offence was registered again with Sardarnagar Police Station on 19.07.2023, for which the petitioner was arrested on 09.08.2023 and was enlarged on regular bail on 28.08.2023 by the Court of Competent Jurisdiction. The aforesaid chronology would indicate that the gap between two offences is of 9 months and therefore, live-link between the two offences is

snapped to treat the petitioner having indulged in similar activity in continuous manner. The subjective satisfaction of the detaining authority regarding petitioner being habitual offender stands vitiated

9. 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 baring 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(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 detenue 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 detenue 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."

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.** 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, the Hon'ble Supreme Court has made following observations in para 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."

11. The Court has taken into consideration the fact that in both the offences, the petitioner has been enlarged on regular bail. The detaining authority had option to resort to lesser drastic remedy of cancellation of bail, however, the detaining authority has not resorted to such remedy available and not only that, but the order of detention also does not reflect the application of mind to the fact that the detaining authority did consider the option of resorting to cancellation of bail, but having

found the same to be ineffective in the case of the petitioner, as a last option, has resorted to passing of detention order. In absence of any reference to the aforesaid, subjective satisfaction of the detaining authority would stand vitiated.

12. In connection with the submissions of learned AGP about four previous detentions of the petitioner, it would be relevant to observe that the earlier detentions were of the year 2016, 2018 and 2020. Mere reference to the previous detention orders without there being any relevant documents/ material in connection with such reference would render the detention order vulnerable and as there is no sufficient material on the record, which would enable the petitioner to answer the same effectively, particularly, previous detention orders, would have resulted either in the petitioner undergoing to fulfill the detentions or the detention order being set aside by the State or by the advisory board or even by this Court. In absence of the material in this regard on record, the detaining authority has not been made aware of the complete details with regard to previous detentions. In that view of the matter also, subjective satisfaction of the detaining authority would stand vitiated.

13. 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.

14. In the result, the present petition is hereby allowed and the impugned order of detention dated **31.08.2023** passed by the respondent – detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case.

15. Rule is made absolute accordingly. Direct service is permitted.

Sd/-
(A.Y. KOGJE, J)

Sd/-
(SAMIR J. DAVE,J)

MEHUL B. TUVAR