

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 17879 of 2023**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

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

SMIT @ LALO RAMESHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR ARJUNDEV ZALA(10205) for the Petitioner(s) No. 1

MR. PRANAV DHAGAT, AGP, for the Respondent(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2

MR. PRANAV DHAGAT, AGP, for the Respondent(s) No. 3

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 08/02/2024

ORAL JUDGMENT

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

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

“B) YOUR LORDSHIP may be pleased to quash and set aside

the order of detention PCB/DTN/PASA/494/2023, dated 13.09.23, at Ann.A passed by Respondent No.2-Detaining Authority under provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985."

2. Essentially, the challenge is to the order of detention dated 13.09.2023, by which the petitioner has been detained as a "dangerous person" based on four offences registered against him.
3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of the offences under the Indian Penal Code by itself cannot bring the case of the detenu within the purview of definition under section 2(c) of the Act. Further, learned advocate for the detenu submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, 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 detenu 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 detenu 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 detenu 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. It is submitted that four offense are registered against the petitioner however, in offense number three and four, the petitioner is not named and even in the said offenses, the recovery of mobile is effected from the co-accused. Further, the

petitioner is arrested by transfer warrant.

3.1 It is submitted that the offences are pertaining bodily injuries and will therefore not amounting to breach of public order as nowhere in the grounds of detention, it is coming out that the sporadic act of the petitioner has caused disturbance to public order. In any case, option was always available to the detaining authority to resort to cancellation of bail of the petitioner.

4. As against this, learned AGP submitted that the detaining authority had sufficient material on the record to pass the order of detention, particularly reference to the same is made by the detaining authority in the very order of detention where the detaining authority has referred to the fact that it was the petitioner who had himself confessed to commission of theft of mobile. Not only that, there are other supporting evidences also which the detaining authority has taken into consideration like drawing of panchnama, which led to discovery of mobile phone of which theft was committed.

5. Having heard learned advocates for the parties and considering the 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 detenu cannot be said to be germane for the purpose of bringing the detenu 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 detenu 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 detenu 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."

6. It appears that the petitioner has been detained in connection with the four offences by the detaining authority by relying upon four offences, the details of which are as under:

Sr. No.	Name of Police Station	CR No. and date	Sections	Date of arrest/bail order
1	Bapunangar Police station	C.R.No.111910072209 39/2022 Dated 26.11.2023	324, 294B, 506(2), 427, 114 of the IPC and under Section 135 of the GP Act.	27.12.2022 27.12.2022
2	Bapunangar Police station	C.R.No.111910072304 81/2023 Dated 28.07.2023	380 and 114 of the IPC	30.07.2023 20.09.2023
3	Bapunangar Police station	C.R.No.111910072304 86/2023 Dated 29.07.2023	380 and 114 of the IPC	29.07.2023 08.09.2023
4	Bapunangar Police station	C.R.No.111910072304 87/2023 Dated 29.07.2023	380 and 114 of the IPC	30.07.2023 01.09.2023

7. The offence in which the petitioner is involved, is against private individual, where surreptitiously, theft of mobile phone has been committed and therefore, ordinary law is sufficient to prevent the petitioner from indulging in further offence, particularly when the petitioner has been granted bail in connection with both the offences on which the detaining authority has relied upon to arrive at a subjective satisfaction. At the same time, the detaining authority has not taken into consideration restoring to the procedure for cancellation of bail.

8. The aforesaid detail would indicate that the first offence was registered on 26.11.2022, where the petitioner was arrested on 27.12.2022 and released on same day i.e. 27.12.2022. The second offense was registered on 28.07.2023 where the petitioner was arrested on 30.07.2023 and released on bail on 20.09.2023, in the third offense which was registered on 29.07.2023, where the petitioner was arrested on 29.07.2023 and released on bail on

08.09.2023. The last offense was registered on 29.07.2023, wherein the petitioner was arrested on 30.07.2023 and thereafter the order of detention has been passed on 13.09.2023.

9. In the decision of the Hon'ble Supreme Court in the case of ***Shaik Nazeen v/s. State of Telanga and Ors*** rendered in Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 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.”

10. One more aspect which requires consideration is the subjective satisfaction arrived at by the detaining authority relying upon the statements of secret witnesses and concluding that the petitioner is such a headstrong person that nobody is ready and willing to go ahead and give adverse statement or file an FIR. Such a subjective satisfaction is vitiated on the ground that in connection with the offence registered against the petitioner, witnesses have given their statements and in these statements, details of the witnesses are also available.

11. The application of mind on the part of the detaining authority while passing the order of detention is also evident from the fact that amongst four offense relied upon in the grounds of detention, it is stated that the in connection with the second offense registered at Bapunagar Police Station on 28.07.2023, the applicant has been enlarged on regular bail on 20.09.2023. This date is appeared in the tabular form contained in the detention

order. It would be relevant to mention that the order of detention itself is dated 13.09.2023 and therefore, date of 20.09.2023 cannot appear in an order which is dated prior to the incident of bail.

11.1 It appears to be a typo in view of the documents placed on record which includes the order of bail where the bail order is dated 02.09.2023 by the Additional Sessions Judge, Court No.13, City Civil and Sessions Court, Ahmedabad in Criminal Misc. Application No.7134 of 2023. However, in absence of any affidavit or submission in this regard, the non application of mind to the facts of the case has become relevant.

12. The Court also finds that there is long gap between the two offences, as one is of the year 2022 and another is of the year 2023. Therefore, there is no live link between the offences. The Court finds that the State has relied upon stale offences as the petitioner does not seem to be habitual offender.

13. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of the PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

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, the present petition is hereby allowed and the impugned order of detention dated 13.09.2023 passed by the respondent-detaining authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in any other case.

16. Rule is made absolute accordingly.

Direct service is permitted.

(A.Y. KOGJE, J)

SIDDHARTH

(SAMIR J. DAVE,J)