

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16547 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

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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AMIRKHAN ALIAS TIWARI ABDULRAUF ABDULJABBAR PATHAN

Versus

COMMISSIONER OF POLICE

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Appearance:

MR. SURESH CHAUDHARY, ADVOCATE for MR SANJAY

PRAJAPATI(3227) for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 2

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

RULE SERVED for the Respondent(s) No. 2

RULE SERVED BY DS for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 04/01/2024

ORAL JUDGMENT

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

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

“(A) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, directions or order quashing and setting aside the impugned order of detention Dtd. 25/08/2023, 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’

2. The present petition is directed against order of detention dated 25.08.2023 passed by the respondent-detaining authority 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-detenu as defined under section 2(c) of the Act.

3. The challenge is to the order of detention dated 25.08.2023. by the Commissioner of Police, City Ahmedabad.

4. Learned advocate for the petitioner submitted that though the grounds of detention indicate that the petitioner has been arraigned as an accused in five IPC offenses registered with Rakhiyal Police Station and Bapunagar Police Station however, in each of the offenses, no role has been attributed to the petitioner. It is submitted that in the first FIR at Rakhiyal Police Station, name of the petitioner is not reflected in the FIR itself, whereas in other two offenses registered with Rakhiyal Police Station and Bapunagar Police Station, no injury is sustained by any of the victims. It is submitted that insofar as last offense registered with Rakhiyal Police Station of 16.05.2023 is concerned, the same has been registered after a long

delay. Learned advocate submitted that therefore, the petitioner cannot be said to have indulged in an activity which causes breach of public order, thereby treating the petitioner as a 'dangerous person'.

4.1 Learned advocate submitted that even if the activity of the petitioner is treated to be dangerous to the society, yet the detaining authority has not acted swiftly in passing the order of detention as from the date of his last release on bail, the order of detention has been passed after a delay of 02 months and 23 days. Learned advocate submitted that insofar as the subjective satisfaction of the detaining authority regarding public order is concerned, there is no substantial material in support of such finding as there are no secret witnesses to indicate that by the commission of any offense, large part of the society has been disturbed.

5. As against this, learned Assistant Government Pleader has objected to the grant of the petition by submitting that the petitioner has a specific area of operation between Rakhiyal and Bapunagar Police Station where, five offenses successively have been registered against the petitioner. The role attributed to the petitioner including the weapon attributed has also been detected during the course of investigation and charge-sheet has been filed against the petitioner. Learned Assistant Government Pleader has further submitted that the detaining authority has taken into consideration the fact that the petitioner was enlarged on regular bail by the Court after the arrest made in respective offense and thereafter, he has continued with his illegal activity for which subsequent offenses came to be registered and therefore, the petitioner is a dangerous person who continuously engages himself

in the offenses under the IPC.

6. Heard learned advocates for the parties and perused the documents placed on record. The order of detention dated 25.08.2023 by Commissioner of Police, City Ahmedabad as detaining the petitioner as a 'dangerous person'. The grounds of detention would indicate that the detaining authority has taken into consideration five offenses registered against the petitioner, the details of which are as under:-

Sr. No.	Name of Police Station, FIR No and date of FIR	Sections	Date of Detention/Date of Bail
1.	Rakhiyal Police Station C.R.No.1119102922 0642/2022 Date: 17.11.2022	324, 323, 294B, 427 and 114 of the IPC and Section 135(1) of the GP Act	07.12.2022 07.12.2022
2.	Rakhiyal Police Station C.R.No.1119102923 0225/2023 Date: 08.05.2023	323, 294B and 114 of the IPC and Section 135(1) of the GP Act	10.05.2023 10.05.2023
3.	Bapunagar Police Station C.R.No.1119100723 0301/2023 Date: 08.05.2023	506(2), 294B, 427 and 114 of the IPC	26.05.2023 29.05.2023
4.	Rakhiyal Police Station C.R.No.1119102923 0226/2023 Date: 16.05.2023	307, 337, 506(2), 427, 294B and 114 of the IPC and Section 135(1) of the GP Act.	09.05.2023 31.05.2023
5.	Rakhiyal Police Station C.R.No.1119102923 0243/2023 Date: 16.05.2023	323, 294B, 506(1) and 507 of the IPC a	17.05.2023 02.06.2023

7. The chronology as mentioned aforesaid would indicate that the petitioner was enlarged lastly in the last offense registered at Rakhiyal Police Station on 02.06.2023, whereas the order of detention is passed on 25.08.2023. There is no material indicating that in between the period of 2 months 23 days, the petitioner has indulged in any kind of antisocial activity or any offense being registered against him. In the opinion of the Court, where the detaining authority has formulated a subjective satisfaction for detaining the petitioner, then in that case the detaining authority is required to act in showing urgency and propensity towards the activity of the petitioner, which in the present case has taken place only after period of 2 months and 23 days and therefore, the detention itself would stand vitiated.

8. The Court has taken into consideration the nature of offenses registered against the petitioner for the incident, which apparently does not appear to have affected the even tempo of life and thereby caused disturbance in public order. The offenses which were registered, the petitioner has been duly arrested and enlarged on regular bail by the Court of competent jurisdiction and therefore, the ordinary course of law was sufficient to deal with the so called antisocial activity of the petitioner.

9. In absence of any proceedings being initiated by the detaining authority/sponsoring authority for cancellation of bail, the subjective satisfaction of the detaining authority that the detention is the only option available would stand vitiated.

10. In this case, 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** dated

22.06.2022, the Hon'ble Supreme Court has made following observations in para 17 as under:-

"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. Considering the nature of offense and which according to the Court is affecting only the individual, who is the complainant and in absence of any statement of secret witnesses to support the detention on the ground of breach of public tranquility, the Court is of the view that the subjective satisfaction of breach of public order is vitiated.

12. 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. In the result, the present petition is hereby allowed and the impugned order of detention dated **25.08.2023 being No.PCB/DTN/PASA/450/2023** 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.

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

(A.Y. KOGJE, J)

(RAJENDRA M. SAREEN,J)

SIDDHARTH