

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 17818 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

ANIL @ MARI S/O ASHOK PATIL
Versus
COMMISSIONER OF POLICE OF CITY OF SURAT

Appearance:

MR KAMLESH KACHHAVAH(3013) for the Petitioner(s) No. 1

MR SAMIR B BUNDELA(2722) for the Petitioner(s) No. 1

MR. PRANAV DHAGAT, AGP, for the Respondent(s) No. 2

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

GOVERNMENT PLEADER for the Respondent(s) No. 3

**CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE**

Date : 25/01/2024

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 prayer:-

"(A) This Honourable court may be pleased to issue a writ of Habeas Corpus or writ of certiorari or any other appropriate writ, order and/or directions quashing and setting aside the detention order dated 07/09/2023 passed by the Respondent No.1 (Ann;A to this petition) and further be pleased to direct the respondents to release the petitioner detenu from the detention forthwith."

2. The present petition is directed against order of detention dated 07.09.2023 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. The challenge is to the order of detention dated 07.09.2023 by which the petitioner has been detained as a 'dangerous person' based on two FIRs registered under the Indian Penal Code offenses at Limbayat Police Station.

3. Learned advocate for the petitioner submitted that the nature of offense in which the petitioner has been arraigned as an accused and relied upon by the detaining authority are of such nature which cannot be termed to be disturbance to public order, but rather an issue where the ordinary law is sufficient to take care and therefore, the petitioner on such cases could not be detained. Learned advocate submitted that the petitioner has been enlarged on regular bail and both the time, the bail has been granted by the concerned police station and therefore, the act of the petitioner cannot be stated to be such which has caused disharmony in public.

3.1 Learned advocate submitted that many of the documents supplied to the petitioner are not legible and therefore, the fundamental rights of the petitioner to make representation against

the order of detention, the petitioner was unable to exercise the same. Learned advocate lastly submitted that the petitioner has not been named in the first FIR, whereas he has been thereafter, arraigned as an accused however, there is no evidence connecting the petitioner as there is no identity of the petitioner which is on the record of the proposal.

4. As against this, learned Assistant Government Pleader has objected to the grant of the petition on the ground that the petitioner has been arraigned as an accused in two offenses of IPC which fall under Chapter 16 and 17 and therefore, clearly falls under the definition of dangerous person.

5. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained by the impugned order dated 07.09.2023 as dangerous person by the detaining authority namely Police Commissioner, Surat City. The grounds of detention would indicate that the detaining authority has relied upon two offenses registered with Limbayat Police Station, details of which are given in tabular form as under:-

Sr. No	Police Stand and C.R.Number and Sections	Date and time of offense	Date and time of arrest	Date of bail granted
1.	Limbayat Police Station C.R. No.- 11210025233564 324, 504 of the IPC and Section 135(1) of the GP Act	28.08.2023 11:30	04.09.2023 22:30	05.09.2023
2.	Limbayat Police Station C.R. No.- 11210025233620 323, 294(B), 506(2) of the IPC	03.09.2023 20:30	05.09.2023 15:30	06.09.2023

6. Upon perusal of the documents annexed with the grounds of detention, it appears that the petitioner who was arrested as an accused in first offense on 04.09.2023 was released on bail by the concerned police station on 05.09.2023 and in connection with the second offense he was arrested on 05.09.2023 and released on bail on 06.09.2023. Considering the fact that the police authority itself has enlarged the petitioner on bail after taking the personal bond and the sponsoring authority being the same i.e. Limbayat Police Station, it would be appropriate to hold that the attributed to the petitioner in the offense was not of such a nature which would cause disturbance in public order. Had it been so, then the same sponsoring authority on two occasions would not have released the petitioner on bail.

7. The Court has taken into consideration the nature of offense on the basis of the documents annexed with the grounds of detention and would indicate that both are sporadic incidents between individuals which had no potential to disturb the public order.

8. The Court has taken into consideration the documents annexed alongwith the grounds of detention, particularly from pages 79 to 87, which are not legible in nature and therefore, considering the decision of the Apex Court in case of **Buyamayum Abdul Hanan @ Anand (supra)**, the petitioner is deprived of the fundamental right to make representation against his detention. The Apex Court has clearly held as under:

“21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of

documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.

22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation.

23. Proceeding on the principles which have now been settled by this Court, it was specifically raised by the respondents in their writ petition and the reference has been made in para 9 of the petition referred to(supra) and in the pleadings on record, there was no denial in the counter filed by the appellants before the High Court that the documents which were supplied and relied upon by the detaining authority were legible and that has not denied respondent no.1 in making effective representation while questioning the order of detention and once this fact remain uncontroverted from the records as being placed before the High Court in writ petition filed under Article 226 of the Constitution and the legal principles being settled, we find no substance in the submissions made by learned counsel for the appellants that merely because respondent no. 1 has failed to raise this question before the detaining authority which go into root of the matter to take away the right vested in the appellant/detenu in assailing the order of detention while availing the remedy available to him under Article 226 of the Constitution of India.

24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention

before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment."

9. Lastly, the Court has taken into consideration the subjective satisfaction arrived at by the detaining authority on the basis of the statement of the secret witnesses which were recorded by the sponsoring authority on 06.09.2023 and were verified by the detaining authority on 07.09.2023 and on the very same day, the order of detention has been passed. Therefore, in the opinion of the Court, the detaining authority has acted in a mechanical manner without applying mind to the entire documents which are placed before the detaining authority by the sponsoring authority.

9.1. The subjective satisfaction to invoke Section 9(2) to withhold the identity of the secret witnesses would also stand vitiated as the offenses registered against the petitioner are of the same period and during this period, the witnesses of the registered offenses have given the statement disclosing their full identity and whereabouts and therefore, the subjective satisfaction to invoke Section 9(2) of PASA to not disclose the identity of secret witnesses would also stand vitiated. In this connection, the Court may rely upon the decision of the Division Bench of this Court in an unreported judgment judgment in case of **Vijay Alias Ballu Bharatbhai Ramanbhai Patni (Kaptiywala) Vs. State of Gujarat in LPA No.454 of 2020** dated 31.08.2020 has dealt with this aspect of invoking Section 9(2) for not disclosing names of

secret witnesses and after examining the law on the issue, has held as under in para-42:-

“42 In this view of the matter, the detaining authority while exercising powers under Section 9[2] of the PASA Act for claiming privilege is expected to consider the general background, character, antecedents, criminal tendency of propensity etc. of the detenu. In the instant case, if the grounds of detention are considered, all that is recorded by the detaining authority is that the fear expressed by the witnesses is found to be genuine and correct by the detaining authority. The detaining authority has recorded that it has carefully scrutinized, examined and considered all the materials that were produced before him by the sponsoring authority. It is, therefore, clear that the detaining authority, while verifying the statements of the witnesses and while considering the question of exercising the privilege under Section 9(2) of the PASA Act, has not taken any independent steps for considering general background, character, antecedents, criminal tendency etc. while recording subjective satisfaction, but has relied solely on the material produced by the sponsoring authority. There is no contemporaneous record to indicate the steps taken by the detaining authority and the grounds and reasons for arriving at the subjective satisfaction. It is therefore very difficult to conclude that the detaining authority has considered general background, character, antecedents, criminal tendency and propensity etc. of the detenu while arriving at the subjective satisfaction, for the need for exercise of powers under Section 9(2) of the PASA Act and claim privilege by not disclosing identity of the anonymous witnesses.”

10. 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.

11. In the result, the present petition is hereby allowed and the impugned order of detention dated **07.09.2023** being **No.PCB/PASA/DTN/751/2023** 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.

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

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH