IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16571 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

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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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SAMSHERSINGH ALIAS DABBUSINGH MANSINGH TANK SIKLIGAR
Versus
STATE OF GUJARAT

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Appearance:
MR DIPESH D SONI(9996) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 1
MR. YUVRAJ BRAHMBHATT, AGP, for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 2
SERVED BY RPAD (R) 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 : 23/01/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

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

> "A) Allow this Special Civil Application by quashing and setting aside the order of detention order being PCB/PASA/DTN/158/2023 dated 06.09.2023 at Annexure-'A' and also be pleased to direct Respondent to release petitioner from the Detention forthwith;"

2. The present petition is directed against order of detention dated 06.09.2023 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–detenue as defined under section 2(c) of the Act.

3. Essentially, the challenge is to the order of detention by the detaining authority Commissioner of Police, Vadodara City detaining the petitioner as a 'dangerous person' based on two offenses registered against the petitioner at Manjalpur Police Station.

4. Learned advocate for the petitioner, at the outset, submitted that there is no evidence that would connect the petitioner with the offense and merely on account of petitioner being arrested in some other offense by way of transfer warrant, the petitioner has been arrested herein and shown as an accused. Learned advocate submitted that there is no recovery of the stolen articles from the petitioner and the same is evident from the documents annexed alongwith the grounds of detention including the recovery panchnama, where also it is clearly indicated that no articles have

been recovered from the petitioner.

4.1 Learned advocate submitted that the petitioner was not even named as an accused and only during the course of investigation, he was arrested. However, there is no Test Identification Parade to connect the petitioner with the offense. Learned advocate submitted that two incidents which are sporadic in nature cannot be treated to consider the petitioner as a habitual offender, thereby attracting definition of dangerous person. Learned advocate submitted that though the detaining authority in its grounds of detention referred to 20 offenses against the petitioner however, no details with regard to such 20 offenses have been furnished alongwith the grounds of detention and therefore, the detaining authority has relied upon material which is not provided to the petitioner.

5. As against this, learned Assistant Government Pleader has objected to the grant of the petition by submitting that the detaining authority was aware of the fact that the petitioner has been indulging in this offense continuously as previously 20 such offenses were registered against him and thereafter also, after being enlarged, the petitioner is continued to indulge in the similar kind of offense.

5.1 Learned Assistant Government Pleader has submitted that the detaining authority has taken into consideration all the aspects including the fact that the petitioner has been enlarged on regular bail and the cancellation of bail would consume more time which would not prevent antisocial activity of the petitioner.

6. Heard learned advocates for the parties and perused the documents placed on record. By the impugned order of detention dated 06.09.2023 by the Police Commissioner, Vadodara City, the petitioner has been detained as dangerous person and the grounds of detention would indicate that the detaining authority has relied upon two offenses, the details of which are given in tabular form as under:-

Sr. No	Police Station, C.R.No. and Sections	Date of Offense and Date of report of incident	Date and time of Arrest
1.	Manalpur Police Station Part-A 11196003230245/23 454, 457, 380 and 114 of IPC	01.04.2023 18:00 to 02.04.2023 at 08:00 13.04.2023 14:10	30.06.2023 At 19:52 Released on bail on 03.08.2023
2.	Manalpur Police Station Part-A 11196003230463/23 454, 457, 380 and 114 of IPC	09.06.2023 10:00 to 11.06.2023 at 12:00 18.06.2023 18:30	26.06.2023 At 22:30 Released on bail on 21.08.2023

7. The aforesaid details would indicate that the petitioner was arrested on 30.06.2023 in connection with the first FIR which was reported on 13.04.2023 for an incident which took place on 02.04.2023. Similarly, in connection with the second FIR, which took place on 11.06.2023 and was reported on 18.06.2023 and the petitioner came to be arrested on 26.06.2023. The aforesaid chronology would indicate that the petitioner was not named in the FIR in fact, the offense was also registered after period of almost a week after its occurrence and it is thereafter, only after a period of

almost two months that the petitioner has been arrested in connection with the first FIR and thereafter, under the transfer warrant in the second FIR. According to this Court, the aforesaid chronology does not indicate that the public order in any manner would be disturbed as the petitioner in the manner mentioned hereinabove, has been arraigned as an accused in two offenses of housebreak /theft. In case of ***Pushker Mukherjee v/s. State of West Bengal***, reported in, [**AIR 1970 SC 852**], the Apex Court while dealing with the definition of 'public order' has held as under:-

> "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."

That, from the aforesaid and the acts attributed to the petitioner, in the opinion of the Court, the public order is not breached as there is no indication in the statements recorded in connection with the registered offenses that even tempo of life in general has been disturbed. It would be pertinent to observe that

there is no statement of secret witnesses in support of the subjective satisfaction of the detaining authority about the breach of public order.

8. The Court has taken into consideration the fact that the petitioner in both offenses have been respectively enlarged on regular bail on 03.08.2023 and 21.08.2023 by the Court of competent jurisdiction and yet the detaining authority has not resorted to lesser drastic remedy available for canceling the bail to prevent the petitioner from indulging in so-called antisocial activity. The only sanctification recorded by the detaining authority in this connection is that the procedure for cancellation of bail would consume lot of time and hence, the order of detention has been passed. However, the chronology as aforesaid would clearly indicate that the petitioner was himself arrested almost after a period of two months of the FIR and between two bail granted in favour of the petitioner, there is a time gap of almost 20 days. Hence, also such subjective satisfaction as recorded would stand vitiated.

9. Subjective satisfaction would stand vitiated as is held in recent 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** 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.*

10. In the result, the present petition is hereby allowed and the impugned order of detention dated **06.09.2023 being No.PCB/PASA/DTN/158/2023** 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.

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

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH