

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1611 OF 2019

Sandeep Mohan Patel,
Aged about 36 years,
presently lodged in Sub-Jail, Fort Area,
Moti Daman, represented through
his brother, Mithun Mohan Patel
permanently residing at Tanki Falia,
Dabhel, Nani Daman)

... **Petitioner**

Versus

1. Union Territory of Daman & Diu,
through the Public Prosecutor,
Daman & Diu.
- 2 District Collector and Magistrate,
Administration of Union Territory
of Daman & Diu, Collectorate,
Daman - 396220.

... **Respondents**

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Mr.Adithya R. Iyer i/b. Mr.Ashish S. Chavan with Mr.Kunal
Shinde, Advocate for the Petitioner.

Mr.H.S.Venegaonkar, Advocate for the Respondent No.1.

Mrs.M.M.Desai, APP for the Respondent No.2/State.

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**CORAM : INDRAJIT MAHANTY &
A.M.BADAR JJ.**

**DATED :
RESERVED ON 14th AUGUST 2019.
PRONOUNCED ON 9th SEPTEMBER 2019.**

ORAL JUDGMENT :

1 By this petition, the Petitioner/detenu is challenging the Order and communication dated 14/03/2019 and 17/03/2019 passed by respondent No.2-District Collector and District Magistrate, Daman in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti-Social Activities, 1985 (hereinafter referred to as 'the PASA Act' for the sake of brevity) so also the Orders dated 20/03/2019 and 26/04/2019 passed by the Administrator, Daman Diu and Dadara Nagar Haveli under Sections 3(3) and 13(1) of the PASA Act respectively.

2 In exercise of powers under Section 3(2) of the PASA Act, on 14/03/2019, the Collector/District Magistrate passed detention order directing detention of the petitioner/detenu, by holding that for preventing him from acting in any manner to the prejudice to the maintenance of the public order, he needs to be detained subject to the approval of the State Government and by subsequent communication dated 17/03/2019, reasons for such preventive detention came to be supplied by the Collector/District Magistrate, Daman to the Detenu. On report of the fact of passing the detention Order in exercise of powers under Section 3(2) of the PASA Act by the Collector/District Magistrate, the Administrator, Daman, Diu and Dadara Nagar Haveli was pleased to approve preventive detention of the petitioner/detenu in exercise of powers under Section 3(2) of the PASA Act. Subsequently, vide Order dated 26/04/2019 on receipt of the

report of the Advisory Board, by exercising powers under Section 13(1) of the PASA Act the Administrator, Daman Diu and Dadara Nagar Haveli was pleased to confirm the Order of detention.

3 Heard the learned Counsel appearing for the petitioner at sufficient length of time. He argued that the petitioner came to be detained by describing him as 'a dangerous person' and by observing that he has committed various crimes and as the General Elections of 2019 round the corner, preventive detention of the petitioner is warranted as he has inclination to some political party. It is argued that it is held by the Detaining Authority that activities of the petitioner/detenu are prejudicial to the maintenance of the public order in the wake of commission of various crimes by him. The learned Counsel by relying on Judgments of the Honourable Apex Court in the matter of *Abdul Razak Nannekhan Pathan Versus Police Commissioner, Ahmedabad*¹, *Yumman Ongbi Lembi Leima Versus State of Manipur*² and *Mustakmiya Jabbarmiya Shaikh Versus M.M.Mehta, Commissioner of Police*³ argued that there is difference between the term "public order" and 'law and order'. In order to make out the case for disturbance of public order, it needs to be shown that tempo of the life of the community as a whole is disturbed by mere presence of the dangerous person. Such is not the case in hand, as seen from the Detention Order as well as

1 1990 (2) G.L.H. 137 (S.C.)

2 2012 (2) SCC 176

3 1995 (3) SCC 237

grounds supplied to the petitioner/detenu. The learned Counsel for the petitioner/detenu further urged that the Detention Order is vitiated by non-supply of relevant material to the petitioner/detenu in order to enable him to make effective representation to the State. For this purpose, he placed reliance on the Judgments in the matter of *Sophia Gulam Versus State of Maharashtra*⁴ and *M. Ahmedkutty Versus Union of India*⁵.

4 The learned Counsel for the petitioner/detenu further argued that vital and important documents were not placed before the Detaining Authority and non-placement of such documents in the form of acquittal Orders has vitiated the detention. Even the Detaining Authority has not considered the Orders acquitting the petitioner/detenu. Bail applications and Orders passed thereon were not considered by the Detaining Authority and old as well as stale offences were considered for holding preventive detention of petitioner/detenu. The learned Counsel further argued that the Detaining Authority has failed to record subjective satisfaction, as to under what category, the petitioner has been branded, for passing the detention Order.

5 As against this, Mr.Venegaonkar, the learned Counsel appearing for the respondent No.1 supported the impugned Order by contending that the record shows that seven FIRs were

4 1999 (6) SCC 593.

5 1990 (2) SCC 1.

registered against the petitioner/detenu and those were for serious offences affecting and disturbing the public peace in the society. In submission of the learned Counsel for the Respondent No.1, a sense of fear and threat was prevalent in Dabhel area due to presence of the petitioner and, therefore, his preventive detention has been ordered.

6 We have considered the submissions so advanced and also perused the reply-affidavit filed by the respondent. In our submission, the Detention Order passed by the respondent No.2 and its confirmation vide Order dated 20/03/2019 and 26/04/2019 by the Administrator cannot be sustained in law.

7 The first and foremost reason found in the detention Order passed under Section 3(2) of the PASA Act by the Collector/District Magistrate is to the effect that the activities of the petitioner/detenu are prejudicial to the maintenance of the public Order. In the reasons supplied to the petitioner on 17/03/2019 supporting this detention Order dated 14/03/2019, it is stated that the petitioner has committed several crimes like theft, criminal trespass, extortion and assault due to which seven FIRs are registered against him and his illegal and anti-social activities are prejudicial to the maintenance of the Public Order.

8 Mere registration of criminal offences is not sufficient for passing the Order of detention by holding that public Order is

adversely affected. The Detaining Authority must get itself satisfied that the material placed before it is sufficient to demonstrate that public order is adversely affected because of the petitioner/detenu being at large in the society. The petitioner/detenu is described as a dangerous person in the Detention Order dated 14/03/2019 passed by the second respondent.

9 Section 3(4) of the PASA Act explained the meaning of the term 'public order', which reads thus :

“3.(1)

(2)

(3)

(4) For the purpose of this Section, a person shall be deemed to be “acting in any manner prejudicial to the maintenance of public Order” when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or common gaming house keeper and cruel person or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.”

Explanation – For the purpose of this sub-section, public order shall be deemed to have been affected adversely or

shall be deemed likely to be affected adversely *inter alia* if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any action thereof or a grave or widespread danger to life, property or public health.”

10 At this juncture, it is opposite to note that the Honourable Supreme Court of India in case of ***Abdul Razak Nannekhan Pathan Versus Police Commissioner, Ahmedabad & Anr. (supra)*** has held thus :

“13. The second crucial question that falls for consideration in this case is whether the grounds of detention particularly referring to the seven criminal cases are relevant and germane grounds for passing of an order of detention under S. 3(1) of the PASA Act. All the seven criminal cases mentioned relate to problem of law and order and not public order in as much as they disclose cases relating to particular persons which has nothing to do with the maintenance of public order. As has already been said herein before that out of the seven criminal cases, two have been compounded and in the fourth case the criminal charges have not been proved against the petitioner as such he was acquitted. The third case being under S. 135 of the Bombay Police Act does not fall within the purview of the S. 2(c) of the Act and it is confined to a private individual. The other three cases which are under investigation also relate to assault to private individuals and they have nothing to do with the disturbance of even tempo of the life of the community or of men of a particular locality nor does it affect the even flow of life of the public as a whole. Section 3(1) clearly mandates that the order of detention can be made only when the State Government or its authorized officer has come to a subjective satisfaction that a person is

required to be detained in order to prevent him from acting in any manner prejudicial to the maintenance of the public order. Sub-section 4 embodies a deeming clause to the effect that a person should be deemed to act in any manner prejudicial to the maintenance of public order when such person is engaged in any activities as a dangerous person which affect adversely or are likely to affect adversely the maintenance of public order. Explanation 2 clause 4 further provides that for the purpose of this sub-section public order shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger of life, property or public health. Coming to this particular case, the criminal cases mentioned in the grounds of detention do not refer to any dangerous, harmful or adverse act or alarm which gives rise to a feeling of insecurity for the general public amongst the persons of a locality. The criminal cases are confined to certain private individuals and it is merely a law and order problem and it has nothing to do with maintenance of public order. Its reach and effect is not so deep as to affect the public at large. It does not create or tend to create any panic in the mind of people of particular locality or public in general nor it affects adversely the maintenance of public order. There is nothing to show that the above activities of the petitioner have affected or tended to affect the even tempo of life of the community. An act may create a law and order problem but such an act does not necessarily cause an obstruction to the maintenance of public order. The difference between 'the law and order and public order has been very succinctly stated by this Court in *Dr. Ram Manohar Lohia v. State of Bihar & Ors.*, [1966] 1 SCR 709 at page 746 wherein it has been stated that:

"It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State" "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the

largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. But using the expression, "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of Indian Rules."

14. In *Pushkar Mukharjee v. State of West Bengal*, (*supra*), it has been stated that:

"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 grounds 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. A District Magistrate is therefore entitled to take action under S. 3(1) of the Act to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."

15. It has also been observed in a recent decision of the Supreme Court in *Piyush Kantilal Mehta v. The*

Commissioner of Police, Ahmedabad City, (supra) that:

"The allegations made against the petitioner may give rise to a question of law and order but, surely, they have nothing to do with the question of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be materials to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'."

11 In case of *Yamman Ongbi Lembi Leima Versus State of Manipur (supra)* the Honourable Apex Court has observed as under :

"27. As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Indian Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention."

12 In case of Mustakmiya *Jabbarmiya Shaikh Versus M.M.Mehta, Commissioner of Police (supra)* the Honourable Supreme Court of India has observed as under :

“9. Further, sub-section (1) of Section 3 of the Act confers power on the State Government and a District Magistrate or a Commissioner of Police under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of 'public order'. The explanation attached to sub-section (4) of Section 3 reproduced above in the foregoing para contemplates that 'public order' shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter-alia if any of the activities of any person referred to in sub-section (4) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sub-section (4) of Section 3 also provides that for the purpose of Section 3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a 'dangerous person' and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a 'dangerous person' his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and

maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of 'acting in any manner prejudicial to the maintenance of public order', the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a 'breach of law and order' or it amounts to 'public order.' If the activity falls within the category of disturbance of 'public order' then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of *Arun Ghose v. State of West Bengal*, this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the

even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different, Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

13 This makes it clear that mere registration of offences against the petitioner/detenu is not sufficient to come to the conclusion that the presence of petitioner adversely affects “public Order”. Something more is required to be shown for that purpose. However, there is nothing in the Detention Order which would reflect that presence of the petitioner/detenu in the society affect the 'public order'. The offences registered against the petitioner/detenu viz. Crime No.89/20004, 98/2004, 72/2007, 01/2009, 172/2009, 109/2013 and 133/2018 are individual cases and it is not demonstrated as to how those cases are disrupting the public life of citizens at Daman causing problem of the public order.

14 Article 22(5) of the Constitution of India provides that Detaining Authority must, as soon as may be, communicate to the detenu the grounds on which the Order of preventive detention has been made. It further provides that the Authority making the Order of preventive detention shall afford the detenu, earliest opportunity of making representation against the said Order. Thus, the detenu is entitled for grounds of detention as well as earliest opportunity for making representation against the Order of preventive detention. By now, it is well settled that the word 'ground' includes not only the formation of ground by the Detaining Authority, but also all those documents and material relied on by the Detaining Authority for the purpose of formation of subjective satisfaction. In the matter of **Smt.Shalini Soni**

*Versus Union of India and Ors.*⁶ relied by the petitioner, the Honourable Apex Court has considered this aspect and held that the the grounds communicated to the detenu must reveal the whole of the factual material considered by the Detaining Authority and not merely inference of fact arrived at by the Detaining Authority. It is held that “grounds” do not mean mere factual inferences, but mean factual inferences plus factual material which lead to such factual inferences. In the case in hand, the Order of detention passed by the second respondent on 14/03/2019 shows that following offences registered against the petitioner/detenu with Police Station Nani Daman came to be considered for passing the Order of detention.

- (i) F.I.R. No. 89/2004 under Sections 143, 147, 149, 323 and 324 of the Indian Penal Code.
- (ii) F.I.R. No. 98/2004 under Sections 143, 147, 148, 149, 323, 324, 504 and 427 of the Indian Penal Code.
- (iii) F.I.R. No. 72/2007 under Sections 143, 147, 148, 149, 452, 325, 356 and 504 of the Indian Penal Code.
- (iv) F.I.R. No. 1/2009, under Sections 454, 457, 380 read with Section 34 of the Indian Penal Code.
- (v) F.I.R. No. 172/2009 under Sections 386, 387, 451 read with Section 34 of the Indian Penal Code.
- (vi) F.I.R. No. 109/2013 under Sections 143, 147, 148, 149, 323 and 504 of the Indian Penal Code.

⁶ 1980 (4) SCC 544.

(vii) F.I.R. No. 133/2018 under Sections 457 and 380 of the Indian Penal Code.

15 However, the Detaining Authority/respondent No.2 has failed to supply copies of the FIRs and other material to the detenu with reasons for detention supplied to him vide communication dated 17/03/2019. Needless to mention here that these documents and material used for formation of subjective satisfaction by the Detaining Authority were not supplied to the petitioner even with the Order of detention dated 14/03/2019. Non-supply of such basic material, as such, violated the fundamental right granted to the petitioner under Article 22(5) of the Constitution of India. His right to make effective representation is adversely affected due to non-supply of the relevant material. The detention Order, as such, is vitiated due to non-supply of the factual material which has led to formation of inference in the detention Order resulting in detention of the petitioner/detenu. Rather non-supply of copies of the FIRs as well as statements recorded in pursuant to the registration of such FIRs would amount to non-communication of grounds of detention to the petitioner/detenu resulting in vitiation of detention Order.

16 The detaining Authority had considered the fact of registration of offences in seven cases against the petitioner/detenu by mentioning the numbers of those Crimes registered with the Nani Daman Police Station. However, the

second respondent/the detaining Authority, as seen from the record, was not made aware to the fact that out of those seven offences, the petitioner/detenu has been acquitted in cases registered in pursuant or the FIR Nos. 72/2007, 01/2009, 172/2009 and 109/2013. So far as the cases registered in pursuant to lodgment of the FIR No.89/2004 is concerned, the same has been compounded. The Criminal Case registered in pursuant to FIR No.98/2004 has been compromised. It is thus clear that in all six criminal cases registered in pursuant to the FIRs shows in the detention Order were already over much prior to passing of Order of preventive detention on 14/03/2019. This position is not disputed. It was incumbent upon the Sponsoring Authority to place all this material before the detaining Authority. However, instead of placing the relevant material showing that out of seven FIRs, six FIRs had come to the logical end, the Sponsoring Authority had informed Detaining Authority about lodgment of seven FIRs against the petitioner. Non-placement of acquittal Orders in six cases and consequently non-consideration of those acquittal by the detaining Authority certainly amount to non-application of mind vitiating the detention Order. In the matter of *Union of India Versus Ranu Bhandari*⁷, the Honourable Apex Court has observed that the detaining Authority must be provided with all the material available against the individual concerned and such material must be supplied to the detenu for making effective representation. It is further held that the material in

⁷ 2008 (3) GLH 700 (SC).

favour of the detenu is also required to be placed before the detaining Authority. In the case in hand, material favourable to the petitioner/detenu i.e. acquittal Orders in six criminal cases was not placed by the Sponsoring Authority before the detaining Authority and, as such, the Order of detention cannot be justified.

17 Now, only the offence vide FIR No.133/2018 remains for consideration. The learned Counsel for the petitioner/detenu submitted that in the said offence, the learned Judicial Magistrate First Class, Daman vide Order dated 01/12/2018 had already released the petitioner on bail. The said Order was neither placed before the detaining Authority at the time of passing of Order of detention nor the detaining Authority was aware about the said Order. This renders the detention Order invalid.

18 Apart from all these factors, the FIRs lodged way back in the year 2004, 2007, 2009 and 2013 were considered by the detaining Authority for ordering preventive detention of the petitioner in the year 2019. Being the stale FIRs and as those FIRs were logically concluded, much earlier, the detaining Authority ought not to have considered those FIRs and ought to have excluded them from consideration. However, this stale material was considered for ordering preventive detention.

19 In the case in hand, Order directing preventive

detention of the petitioner/detenu in exercise of powers under Section 3(2) of the PASA Act came to be passed by second respondent/detaining Authority on 14/03/2019, whereas grounds for detention came to be supplied to him vide communication dated 17/03/2019. For passing the order of preventive detention, the detaining Authority has to arrive at subjective satisfaction on the basis of material placed before him to the effect that the detention of the particular individual is necessary. The requisite satisfaction of the detaining Authority should precede the detention Order. However, in the case in hand, it appears that as General Election of the year 2019 were round the corner, the petitioner/detenu was first detained in pursuance to Order dated 14/03/2019 and thereafter, grounds for his detention came to be formulated. At any rate, delay in furnishing grounds of detention to the detenu vitiates the detention.

20 In the light of foregoing reasons, we are unable to justify preventive detention of the petitioner/detenu and, therefore, the petition deserves to be allowed. Accordingly, Rule is made absolute in terms of prayer clause (b). It is ordered that the petitioner/detenu be released forthwith if he is not required in any other offence or proceeding.

21 The petition is accordingly disposed of. No costs.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)