IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9783 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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MANISH S/O RAJUBHAI RATHOD THROU SISTER PINKYBEN D/O RAJUBHAI RATHOD

Versus

STATE OF GUJARAT

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Appearance:
MR GAJENDRA P BAGHEL(2968) for the Petitioner(s) No. 1
MR ADITYA JADEJA, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 1
RULE SERVED(64) for the Respondent(s) No. 2,3

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CORAM: **HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

Date : 24/12/2020

ORAL JUDGMENT

[1.0] This petition under Article 226 of the Constitution of India is

directed against the order of preventive detention dated 25.06.2020 made by the Police Commissioner, Surat City – respondent No.2 herein in exercise of powers under Sub Section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act') whereby the petitioner has been detained as "dangerous person". The said order came to be executed upon the petitioner – detenue on 25.06.2020.

[2.0] Shri G.P. Baghel, learned advocate for the petitioner – detenue, submitted that for arriving at a subjective satisfaction and branding the petitioner as dangerous person, the detaining authority has relied on two registered cases against him, being (i) C.R.No.I-351 of 2019 registered with Umra Police Station on 07.10.2019 for the alleged offence punishable under Section 326, 506(2) and 114 of the Indian Penal Code and Section 135 of the Gujarat Police Act and (ii) C.R.No.11210048200693 of 2020 registered with Umra Police Station on 28.05.2020 for the alleged offence punishable under Section 307 of the Indian Penal Code and Section 135 of the Gujarat Police Act. He submitted that the detaining authority has relied on two registered cases along with statements of two anonymous witness to arrive at a subjective satisfaction that the activities of the petitioner is such, which is prejudicial to the maintenance of public order, and therefore, the preventive detention order has come to be passed against the petitioner. However, he has submitted that mere registration of FIRs for the offence under the Indian Penal Code by itself would not render petitioner liable, in absence of any material to conclude that his activities are prejudicial to the maintenance of public order. Referring to the impugned order, it is pointed out that the subjective satisfaction of the detaining authority is based upon the fact that the petitioner is a dangerous person as defined under Section 2(c) of 'the Act'. It is submitted that merely because a person can be termed as dangerous

person unless his activities are found to be prejudicial to the maintenance of public order, a person cannot be preventively detained.

[2.1] It is further submitted that except the personal violence against them mentioned by the anonymous witnesses, rest of the part of the statements are verbatim same and it is recorded stereotype and therefore, it is submitted that the subjective satisfaction recorded by the detaining authority based on statements of anonymous witnesses is vitiated.

[2.2] He has further submitted that filing of the FIR itself, considering the material reflected from the order of detention as also the grounds of detention, would not disclose that there is any breach of public order. He has further submitted that except the statements of witnesses recorded hereinabove FIRs and panchnama drawn during the investigation, no other relevant and cogent material is on record connecting the petitioner with any activities prejudicial to the maintenance of public order and therefore he has requested to allow the present petition and set aside the preventive detention order.

[3.0] As against that, Shri Aditya Jadeja, learned Assistant Government Pleader, submitted that after considering the material placed before the detaining authority, on careful examination of it, an order of preventive detention has come to be passed, and therefore, it requires no interference. He has further submitted that, as a matter of law, it cannot be held that the preventive detention order cannot be passed only on registered offence. If registration of offence clearly discloses breach of public order or activities of the petitioner, which is prejudicial to the maintenance of public order, a preventive detention order can be passed by the authority against the petitioner. Therefore, he has requested to dismiss the petition.

[4.0] Having heard the learned advocates for the appearing 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 FIRs cannot be have any bearing on the breach of public order and the penal laws are sufficient enough to take care of the situation. Except the allegations, there is no material on record, which shows that the petitioner is acting in any manner prejudicial to the maintenance of public order. 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 detenue is a dangerous person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the maintenance of 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*** reported in ***[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."

[5.0] While dealing with the matters pertaining to preventive detention, this Court has come across several cases where statements of anonymous witnesses have been recorded and the privilege is claimed by the detaining authority under Section 9(2) of the Act where second offence relates to personal enemity with close relative, which has led to commission of offence. Barring the individual incident occurred, as stated by the anonymous witnesses, rest of the part is admittedly shown, from their statements, to be causing hindrance to the maintenance of public order. However, almost in all cases the language employed in it is verbatim same and therefore, it creates doubt about the genuineness of not only as to contents of the statements but, as to existence of those witnesses

[5.1] Thus the activities of the petitioner, based on registered offences as also the statements of anonymous witnesses, cannot be said to be in any manner prejudicial to the maintenance of public order and therefore the subjective satisfaction arrived at by the detaining authority is vitiated and is required to be set aside.

[6.0] In view thereof, the petition succeeds and is accordingly allowed. The impugned order of detention bearing

No.PCB/PASA/DTN/163/2020 dated 25.06.2020 passed by the Police Commissioner, Surat city, is hereby quashed and set aside and the petitioner – detenue is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly.

(UMESH A. TRIVEDI, J.)

PATEL ILA KANTIBHAI /siji