IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8886 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

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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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AABA THOTHARE FATHER OF VISHWAS THOTHARE
Versus
STATE OF GUJARAT

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Appearance:
MR KEYUR A VYAS(3247) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the Respondent(s) No. 1
MS JIRGA JHAVERI, ASST.GOVERNMENT PLEADER(1) for the Respondent(s) No. 3
RULE NOT RECD BACK(63) for the Respondent(s) No. 2
RULE SERVED(64) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

Date : 30/12/2020

ORAL JUDGMENT

1. Petitioner is before this Court seeking following

reliefs:-

> *"14. The petitioner therefore prays:-*
>
> *(A) Your Lordship may be pleased to admit and allow the present petition.*
>
> *(B) Your Lordship may be pleased to pass appropriate writ, order or direction in the nature of mandamus or habeas corpus by quashing and setting aside the detention order dated 19.07.2020 passed by the respondent No.2 herein and set the detenue son of the petitioner at liberty forthwith.*
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> *(C) Your Lordship may be pleased to pass any other writ, order or directions which may deem just, proper and fit in the interest of justice."*

2. Challenge is under Gujarat Prevention of Anti-Social Activities Act ('the PASA Act"for short) to the action of respondent No.2, who has invoked the powers under sub-section (1) of section 3 of the PASA Act thereby passing the order of detention being No.PCB/PASA/DTN/63/2020 dated 19.07.2020. According to the petitioner, the detaining authority has lodged two cases under the provisions of the Indian Penal Code, wherein he had already been

granted bail. The allegations made against the detenue are false and vague in nature. None of the alleged acts or activities of the petitioner's son is within the purview of disturbance of public order. He has been termed and branded as dangerous person under section 2(c) of the PASA Act. It is the grievance on the part of the petitioner that there has been complete non-application of mind on the part of the detaining authority.

3. This Court (Coram: Biran A. Vaishnav, J.) issued rule on 31.07.2020. The grievance on the part of the Mr.Keyush Vyas appearing for the petitioner is that twice earlier the order of PASA had been passed against the petitioner and order impugned is a calculative move to continue him under detention. He has sought indulgence of this Court. It is further urged by learned advocate for the petitioner that none of the offences is potent enough to hold him a dangerous person.

4. Learned Assistant Government Pleader has

questioned and challenged the very entertainment of this petition on the ground that the authority concerned has rightly invoked the powers. The persons is a dangerous person inasmuch as he has not been able to be controlled by way of ordinary law of the country.

5. At the outset, the order of detention, which is impugned herein is of 19.07.2020, if is looked at, it speaks of four offences of Manjalpur police station and order of PASA twice earlier. He, however, has stated to have continued his activities and, therefore, the two offences are regarded for invocation of powers under sub-section(1) of section 3 of the PASA Act. He is said to be a dangerous person as he breaks the CCTV cameras and can enter any factory and break open the drawer or workshop stores and thereby, takeaway all valuable articles like DVR, phosphorous etc. His associates are said to have formed a gang, whose only work is to commit a theft of all valuables and sell it at a through away price. The first First Information

Report being CR.No.I-108 of 2019 dated 08.08.2019 registered at Manjalpur police station speaks of theft having been committed at Kadri Engineering, which is a shop belonging to the owner of one Mr. Sajid. The complaint is being given by one Mr. Abhijit Hemant. Out of the three cameras of Shanischar Engineering Works have been broken and another side of camera had been changed. All the wires of CCTV camera had been cut and DVR has been stolen. The wires of two cameras placed at the factory workshop have been cut by breaking open the class, windows, grill of the window also had been bent as per this complaint. The panchnama is also reflective of the total value and the damage caused in the factory in the process. Five days remand has been sought from the learned Additional Judicial Magistrate First Class by police Sub-Inspector, Manjalpur. For the offences of the year 2019, he has been arrested in the month of January, 2020. Regular bail has been granted by learned 4th Additional Sessions Judge in Criminal

Miscellaneous Application NO.282 of 2020. The Court has referred to other three offences, and eventually granted him the regular bail, essentially on the ground that no recovery or discovery has been made from the petitioner.

6. CR.No.II-82 of 2020 has been registered with Manjalpur police station in connection with offences punishable under sections 454, 457 and 380 of the Indian Penal Code. The complaint is given by Rakeshbhai Chandubhai Mistry on 06.04.2019. On 08.04.2019 in the morning, when he opened his factory, he realized that all the belongings of his were not found. When he went to check the CCTV camera, he realized that the same had been taken away. He found the theft of brass scrap, PB scrap, brass reel and CCTV camera. The total value of which was around Rs.1,80,000/-. The bail has been granted by learned Additional District & Sessions Judge, Vadodara in Criminal Miscellaneous Application No.484 of 2020. He with his other associates was attempting to carry the stolen

muddamal articles. The police had caught them red handed.

7. It appears that the indiscriminate action of the petitioner and his associates has caused this fear in the mind of the people. He is branded as dangerous person. The law on that subject as laid down in Special Civil Application 9514 of 2020 is as under:-

> *"7. Having, thus, heard both the sides and also on examining the material on record, it can be noticed that by virtue of the order dated 26.07.2020, passed by respondent No.2, the petitioner has been detained under the PASA Act. The challenge is made on various grounds, principal being that action of the petitioner is, in no manner, causing prejudice to the public peace nor is it causing the disturbance of the public order. On the ground that there is violation of Articles 21 and 22 of the Constitution of India and the settled law of the country, this challenge is made.*
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> *7.1 At the outset, the definition of the dangerous persons is required to be considered from the provisions of the PASA Act, which is provided under Section 2(C) of the PASA Act. A person, who either by himself or as a member or leader of a gang; during the period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under the IPC, is termed as a dangerous person under the Act, as provided under this Act or under any other Act. Thus,*

what is required of the person, who is termed as the dangerous person, is of his commission of offences, as provided in this definition and his habit of committing such offences.

7.2 Sub-Section (1) of Section 3 of the Act, which empowers the State Government that, if, it is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. Therefore, the same shall need to be regarded by this Court. Further, Sub-Section (4) of Section also shall need to be regarded by this Court, which provides, 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 a person is engaged in or is making preparation for engaging in any activities, whether, as a bootlegger or common gambling house 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. The explanation for the purpose of this sub-section provides 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 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 to fife, property or public health.

7.3 In this background, the Court shall also need to regard the decision of the Apex Court in the case of 'AMANULLA KHAN KUDEATALLA KHAN VS. STATE OF GUJARAT', AIR 1999 SC 2197, where, the

Apex Court was considering as to who can be termed as the dangerous person or a habitual offender. In the matter before the Apex Court, the detaining authority on being satisfied from the activities of the detenu that he belongs to a notorious gang and the members of the gang hatched conspiracy to extort money from the people, by putting them under threat of fear of death, was satisfied that the detenu is a dangerous person within the meaning of Section 2[c] of the Act and the activities of the detenu and his gang members were such that for maintenance of public order it was necessary to detain the detenu and accordingly the order of detention against the detenu was passed. The Apex Court, on hearing both the sides, held that the subjective satisfaction arrived at by the respondent authority is just and thereby, it refused to interfere with the order of detention. The relevant observations read thus:

"3. The detaining authority on being satisfied from the activities of the detenu that he belongs to a notorious gang and the members of the gang hatched conspiracy to extort money from the people who are engaged in building construction business in the city by putting the people under threat of fear of death, was satisfied that the detenu is a dangerous person within the meaning of Section 2[c] of the Act and the activities of the detenu and his gang members were such that for maintenance of public order it was necessary to detain the detenu and accordingly the order of detention against the detenu was passed. Immediately after the order of detention was passed, the detenu approached the Gujarat High Court as already stated inter alia on the ground that the single activity of the detenu for which CR No. 36/97 under Sections 120- B, 387 and 506(2) IPC had been registered is not sufficient to hold him to be a dangerous

person within the meaning of Section 2[c] of the Act and as such the order of detention is vitiated. By the impugned Judgment, the High Court came to the conclusion that the satisfaction of the detaining authority was not based solely on the incident culminating in registration of the criminal case under Sections 120-B, 387 and 506(2) of the Indian Penal Code but also the incidents that happened on 26.7.98 and 2.8.98 about which the two witnesses have stated before the detaining authority and therefore, the satisfaction of the detaining authority, holding the detenu to be a dangerous person cannot be said to be vitiated.

4. Mr. Anil Kumar Nauriya, the learned counsel appearing for the detenu in this court reiterated the same contention namely that a single incident in which the detenu is alleged to be involved and for which the criminal case had been registered will not be sufficient to hold the detenu to be a dangerous person under Section 2[c] of the Act inasmuch as the expression dangerous person has been defined to be a person who either by himself or as a member or leader of a gang, during a period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. In other words according to the learned counsel unless the activities of the detenu considered by the detaining authority indicate that he has either habitually committed or attempted to commit or abet the commission of offence, cannot be held to be a dangerous person under Section 2[c] of the Act. The expression habitually would obviously mean repeatedly or persistently. It supplies the threat of continuity of the activities and, therefore, as urged by the learned counsel for the petitioner an isolated

act would not justify an inference of habitually commission of the activity. In this view of the matter the question that requires adjudication is whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu. If the grounds of detention is examined from the aforesaid stand point, it is crystal clear that apart from the criminal case which had been registered against the detenu for having formed a gang and hatched a conspiracy to extort money from the innocent citizens by threatening them and keeping them under constant fear of death, the two witnesses examined by the detaining authority narrated the incident that happened on 26.7.98 and 2.8.98 in which the detenu was involved and on the first occasion a sum of Rs. 1 lac was demanded and when the person concerned refused, he was dragged and assaulted and on the second occasion a sum of Rs. 50 thousand was demanded and on refusal, the persons were dragged on the road and were beaten on the public road. It is not the grievance of the detenu that the statements of the aforesaid two witnesses had not been appended to the grounds of detention or had not been mentioned in the grounds of detention. In fact the grounds of detention clearly mention the aforesaid state of affairs and there is no bar for taking these incidents into consideration for the satisfaction of the detaining authority that whether the person is a dangerous person within the ambit of Section 2[c] of the Act. We, therefore, fail to appreciate the first contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a dangerous person is based upon the solitary incidence in respect of which a criminal case has already been

registered. In our considered opinion the detaining authority has considered the three different incidents happened on three different dates and not a solitary incidence and, therefore, the test of repeatedness or continuity of the activity is fully satisfied and the satisfaction of the detaining authority holding the detenu to be a dangerous person is not vitiated in any manner. The contention of the learned counsel for the petitioner therefore stands rejected.

5. Mr. Anil Kumar, the learned counsel then urged that even if the activities of the detenu were sufficient to hold him to be a dangerous person yet an order of detention can be passed under the Gujarat Act only with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. By virtue of provisions contained in Sub-section (4) of Section 3 of the Act 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 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. Thus maintenance of public order is sine qua non for passing an order of detention under Section 3 of the Gujarat Act. But in the case in hand the alleged activities of the detenu are all in relation to violation of the normal criminal law and it has got no connection with the maintenance of public order and, therefore, the order of detention is vitiated. We are unable to appreciate this contention of the learned counsel for the detenu inasmuch as even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large

or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not. In Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commisioner of Police and Ors. 1995(3) SCC 237, it has been held by this court 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 breach of public order. Applying the ratio of the aforesaid decision to the facts of the present case we find that the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and, therefore such activities cannot be said to be a mere disturbance of law and order. In our considered opinion the activities of the detenu are such that the detaining authority was satisfied that such activities amount to disturbance of public order and to prevent such disturbance the order of detention was passed. We, therefore, do not find any substance in the second contention of the learned counsel for the detenu. Mr. Anil Kumar then urged that the Advisory Board having not indicated that the detenu is to be detained for more than three months, has failed to discharge its constitutional obligation and there has been an infringement of Article 22(5) of the

Constitution and in support of the same reliance has been placed on the decision of this court in A.K. Gopalan vs. The State of Madras, 1950 SCR 88 and the decision of this Court in John Martin vs. The State of West Bengal, 1975(3) SCR 211. At the outset it may be stated that the detenu had not made any such grievance in the writ petition that had been filed in the Gujarat High Court. That apart, the opinion of the Advisory Board to the State Government, rejecting the representation of the detenu and expressing its opinion with regard to the existence of sufficient cause for the detention of the detenu is not a part of the record and what is pressed into service by the learned counsel in support of his argument is the mere communication from the Section Officer of the Home Department dated 27th August, 1998, intimating the factum of the rejection of representation by the Advisory Board. Section 11 of the Act is the procedure for making reference to the Advisory Board and Section 12 provides the duties and obligation of the Advisory Board on the basis of materials placed before it. Under Sub-section (2) of Section 12 it is the requirement of law that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the detenu and this opinion of the Advisory Board has been furnished in the present case. We really fail to understand how a contention could be raised that the Advisory Board has failed to discharge its obligation and how the court would be entitled to examine the same without even the copy of the report of the Advisory Board being formed a part of the records of the present proceedings. In view of the counter affidavit filed in the present case that all the provisions have been duly complied with and in the absence of any material to support the arguments advanced by the learned counsel,

we do not find any force in the contention raised alleging any infraction of provision of law in the opinion given by the Advisory Board and the said Board in rejecting the representation of the detenu. This contention therefore, is devoid of force."

7.4 In case of 'SUBRAMANIAN VS. STATE OF TN & ANOTHER', (2012) 4 SCC 699; the Apex Court was considering the as to when would be the public order can be said to be disturbed. It denotes the tempo of the community, the use of the weapons and the damage caused to the public and private property, threatening public tempo and creating panic amongst the people in a locality and this was held sufficient to disturb the public order. The relevant observations are as under: "9) With regard to the first submission that no case is made out for preventive detention by invoking the provisions of T.N. Act 14 of 1982, though the ground case incident arose out of a land dispute between the detenu and the de facto complainant, however, the argument that it is only a law and order problem and that public order was not disturbed is contrary to the facts and equally untenable. As rightly pointed out by Mr. Guru Krishnakumar, the Detaining Authority, on consideration of materials placed has found that the accused caused damage to both public and private properties, threatened the public and also created a situation of panic among the public. In this regard, it is useful to refer the materials narrated in the grounds of detention which are as follows: "On 18.07.2011, at about 10:00 hours, while Kaliyamoorthy was available in the STD booth, Kajamalai Kadaiveethi, Kajamalai, Tiruchirapalli city, the accused Kajamalai Viji @ Vijay armed with aruval, his associates Manikandan, Uthayan, Sathiya, Sivakumar armed with Kattas came there. The accused Kajamalai Viji @ Vijay abused Kaliyamoorthy

in a filthy language, threatened to murder him with aruval by saying "Have you become such a big person to give complaints against me. You bastard, try giving a complaint, I will chop you down right here." His associates threatened him with their respective kattas. Thereafter, the accused Kajamalai Viji @ Vijay caused damage to the glasses, chair and stool available in the shop. While Kaliyamoorthy questioned them, the accused Kajamalai Viji @ Vijay slapped him on the face. Kaliyamoorthy raised alarm for rescue. The general public came there and they were threatened by the accused Kajamalai Viji @ Vijay and his associates by saying "if anyone turns up as witness, I will kill them." The nearby shop-keepers closed their shops out of fear. Auto drivers took their autos from the stand and left the place. The situation created panic among the public. On the complaint of Kaliyamoorthy, a case in K.K. Nagar P.S. Cr. No. 361/2011 u/s 147, 148, 447, 448, 427, 294(b), 323, 506(ii) IPC and 3 P.P.D. Act was registered." 10) From the above materials, the Detaining Authority was satisfied that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a `goonda' as contemplated under Section 2(f) of the T.N. Act 14 of 1982. The order further shows that the Detaining Authority found that there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order. After narrating the details of the ground case and after adverting to earlier instances commencing from the years 2008 and 2010, the Detaining Authority has concluded as under:- "Hence, I am satisfied that the accused Kajamalai Viji @ Vijay is habitually committing crimes and also acting in a manner prejudicial to the maintenance of Public order and as such he is a Goonda as contemplated under Section

2(f) of the Tamil Nadu Act No. 14 of 1982. By committing the above described grave crime in a busy locality cum business area, he has created a feeling of insecurity in the minds of the people of the area in which the occurrence took place and thereby acted in a manner prejudicial to the maintenance of public order." 11) It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion." 7.5 Reliance is also placed on the decision of this Court in Special Civil Application No. 6414 of 2020, Dated : 12.06.2020, where, the Court was considering the question of detaining authority having termed the petitioner as the dangerous person under Section 2(C) of the PASA Act. Relying on the decision of the Apex Court in 'PUSHKER MUKHERJEE V. STATE OF WEST BENGAL', AIR 1970 SC 852, 'DR. RAM MANOHAR LOHIA V. STATE OF BIHAR & OTHERS', (1966) 1 SCR 709 and 'DARPAN

KUMAR SHARMA ALIAS DHARBAN KUMAR SHARMA V. STATE OF T.N. AND OTHERS', AIR 2003 SC 971 and other decisions, the Court held that the detaining authority failed to substantiate the aspect that the alleged anti-social acts of the petitioner-detenu adversely affected or likely to adversely affect the maintenance of public order. Profitable, it would be to reproduce the relevant observations, which read thus:

4. Having heard learned advocates for the 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 FIR/s cannot have any bearing on the breach of public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of section 2(c) of the Act. 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 person within the meaning of section 2(c) of the Act. Except general statements (two FIRs), there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the public order. In this connection, it will be fruitful to refer to a decision of the Hon'ble Supreme Court in Pushker Mukherjee v. State of West Bengal, AIR 1970 SC 852, where the distinction between 'law and order' and 'public order' has been classically laid down, which is 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." 5. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Hon'ble Supreme Court in the case of Dr. Ram Manohar Lohia v. State of Bihar & Others, (1966) 1 SCR 709. In this judgment, His Lordship Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads as under: "....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of

the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. 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...."

6. In Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and others, reported in AIR 2003 SC 971, the Hon'ble Supreme Court made the following observations: "The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the

point of knife a sum of Rs.1000/-. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of 'Goonda' the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention." 7. In Siddharth @ Sindhu Laxmanbhai Thorat v. District Magistrate, Navsari, in Letters Patent Appeal No.1020 of 2019 dated 08.05.2019, this Court has made following observations: "8. Having regard to the facts and circumstances of the case, We find that though there are powers available under section 3(1) of the Act, ordinary law of Indian Penal Code under which FIRs are registered in four offences for which punishment is prescribed in the Indian Penal Code, is sufficient and order of detention cannot be passed as a short cut to exhaust such remedy. Ordinarily, this Court will be loath in interfering with subjective satisfaction of the detaining authority. While arriving at subjective satisfaction, the detaining authority is supposed to undertake objective assessment of the material available. In this connection, we may refer to the judgment of this Court in Letters Patent appeal No.2732 of 2010, dated 28.3.2011 in the case of Aartiben W/o Nandubhai Jayantibhai

Sujnani vs. Commissioner of Police & 2 others, wherein, this Court has quoted the observations made by Apex Court in the case of Pushker Mukherjee vs. State of West Bengal, reported in AIR 1970 SC 852, wherein distinction is drawn between public order and law and order. The Supreme Court observed in the said judgment 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." 8. It is also fruitful to refer to the judgment of the Hon'ble Supreme Court in the case of Arun Ghosh v. State of West Bengal (1970) 1 SCC 98, wherein, the Hon'ble Supreme Court has observed as under: "... Public order was said to 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 effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act....” 9. Further in the case of Mustakmiya Jabbarmiya Shaikh v. M. M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 observed as under: “8. The Act has defined "Dangerous Person" in clause (c) of section 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. (1987), p. 499, 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn., p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an

isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalanchari v. State of Kerala, AIR 1981 SC 674, this Court had an occasion to deal with expressions like "bad habit", 'habitual', 'desperate', 'dangerous', and 'hazardous'."

7.6 In 'Mustakmiya Jabbarmiya Shaikh' (Supra), the Court examined the expression 'habit' or 'habitual' offender to held that 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. However, it does not refer to the frequency of the occurrence and invariably the practice and the habit.

7.7 This Court in Special Civil Application No. 8592 of 2020 also was considering the case of the petitioner, who was detained under Section 2(C) of the PASA Act as a dangerous person, on the basis of the criminal case registered against him for the offence under the Disaster Management Act, on the ground that the activities of the petitioner was affecting the maintenance of the public order and the order under challenge was not upheld. While so doing, the Court relied on the decision in 'DR. RAM MANOHAR LOHIA' (Supra).

7.8 On the basis of the law on the subject, what needs to be regarded by this Court is, as to whether, the kind of infraction or the order can be regarded as prejudicial to the maintenance of the public order and whether the same would be governed under the

public order.

7.9 As can be noticed from the decision of the Apex Court in 'PUSHKER MUKHERJEE' (Supra), it is not a case of two people quarreling and fighting with each other either in their house or in the streets, and therefore, there was disorder, but, not public disorder. Such cases are dealt with the ordinary criminal laws and obviously, no person could have been detained on the ground that they were disturbing public order. Such contravention of the law would always vitiate the order, as is held by the Apex Court. But, before it is said to have affected the public order, it must affect the public at large. Therefore, the Court has drawn a line, demarcating between serious and grave danger and injury to the public interest and relatively minor breach of peace of purely local, which is primarily of local and is not likely to affect the public order. It would be vital for this Court to consider, as to whether, it can be said to be mere disturbance of law and order, leading to disorder, as provided under the PASA Act.

7.10 The public order, as held in case of 'ARUN GHOSH' (Supra), is said to embrace more of the community than law and order. The Court even went to an extent to state that 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.

7.11 On the strength of the law on the subject, if, the actions of the petitioner are considered from the material, which has been presented on record, this Court notices

that there are two FIRs registered against him, which speaks of the theft of motorcycles. The person had gone to serve, after parking his motorcycle in the parking and when he returned, he found the same to be missing. Likewise, the second FIR filed with the JP Road Police Station also speaks of such theft of the vehicle by unknown persons. It is vital to make a mention, at this stage, the various statements recorded of the police personnel, who had formed a team at DCB Police Station. There was increase in number of theft of motorcycles within the city of Vadodara, and therefore, various teams were formed and used of CCTV footages and surveillance and other modes were also used to detect the crime. In such an attempt of nabbing the criminals, while Team 2 was in patrolling on an input received that some persons were trying to sell the motorcycles, which were allegedly stolen, those persons were cordoned and the motorcycle with engine and chassis number, but, without any RTO registration was found. Thereafter, it was realized that there had been theft of about 10 motorcycles and later on, the father of co-detenue and the petitioner in Special Civil Application No. 9515 of 2020 produced the same. The details of the same is forming the part of the statement of the secret witnesses. 7.12 At the first go, this may appear to be the case of only two FIRs, and therefore, the question arose of whether, the expression 'habit' or 'habitual' can be applied to someone, who has allegedly involved in two of such crimes. As held in the case of 'Mustakmiya Jabbarmiya Shaikh' (Supra), it does not refer to the frequency of the occasion and frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. Being aware of the fact that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a

> *"dangerous person"; unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. In the case on hand, it can, surely, be stated that the acts of the petitioner are, though, directed against individuals or in essence in a locality and it determines that it is not only amounts to disturbance of the law and order but it also does affect the public order. This, surely, cannot be said to be a breach of peace of local significant, injuring only the specific individual and noticing the number of theft of motorcycles and the plethora of material to substantiate this aspect, it will be difficult for this Court to held that the subjective satisfaction arrived at by the respondent-authority is without any valid basis."*

8. From the law discussed above as to who can be termed as a dangerous person, the Court needs to regard the materials placed before the detaining authority in its arrival at subjective satisfaction. The court cannot be oblivious of the fact that twice earlier, there has been invocation of PASA Act against this man and for the third time, the same has been invoked by the authority against him to prevent him from indulging into the very natured activities. In one of the First Information Reports, the police could not find much material to connect him and there could never be possibly any direct

evidence in the matter of theft. The theft though can be said to be something, which can be handled by the ordinary law of the country, that would not be determinative of what resulted in the present matter as what also begs attention of the Court is the latest technological innovations for the safety of people and safeguard of the valuables and immovable properties of business and residential premises. These mechanism require devices which include CCTV camera, DVR etc. They also eventually aid the police and investigating wing to nab the culprits. The petitioner with his associates continue to act smartly in defiance of law. No amount of dealing under the ordinary law has helped the authority in preventing the petitioner from carrying out the said activities. Although detaining a person under the PASA Act is the last resort ordinarily to be taken by the detaining authority. Not only the theft but serious damage of these devices and rendering the places unsafe create panic and fear amongst all concerned and also cause a substantial amount of

doubt against the authorities meant to safeguard the law and order situation. This persistent and unstoppable acts if led the authority to invoke Order of detention, by holding that the issue is incapable to be handled by the ordinary law, no indulgence is necessary.

9. Thus, the facts cumulatively lead this Court to conclude that there is no requirement for the Court to replace its discretion in the given circumstances.

10. Petition stands rejected accordingly and rule is discharged .

(SONIA GOKANI, J)

MISHRA AMIT V./sudhir