**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 9125 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE UMESH A. TRIVEDI Sd/-**

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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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VIRENDRA @ VARUN @ BHURIYO NARENDRASINH CHUDASAMA THRU HIS MOTHER NAYANABEN NARENDRASINH CHUDASAMA

Versus

THE STATE OF GUJARAT & 2 other(s)

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Appearance:
O I PATHAN(7684) for the Petitioner(s) No. 1
MR. ADITYA JADEJA, AGP for the Respondent(s) No. 1,2,3

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

**Date : 23/12/2020**

**ORAL JUDGMENT**

[1.0.] This petition under Article 226 of the Constitution of India is directed against the order of preventive detention dated 20.6.2020 passed by the Police Commissioner, Ahmedabad city, in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (herein after referred to as 'the Act')

whereby, the petitioner has been detained as a 'Dangerous Person'. The aforesaid order came to be executed upon the petitioner on the very same day.

[2.0.] Mr. O.I.Pathan, learned advocate for the petitioner submitted that to brand the petitioner as a 'Dangerous Person' under Section 2(c) of the Act, the Authority has relied on four offences registered at (i) C.R.No.I-136 of 2019 for the offence punishable under Sections 379, 356 and 114 of IPC on 23.06.2019, (ii) C.R.No.I-146 of 2019 for the offence punishable under Sections 379(a)(1) and 114 of Indian Penal Code registered on 30.6.2019, (iii)C.R.No.I-147/2019 for the offence punishable under Sections 379 and 114 of IPC and (iv) C.R.No.251/2019 for the offence punishable under Section 380 of IPC. He has also submitted that the registration of offences under the Indian Penal Code simplicitor will not reflect breach of public order. However, the order of preventive detention has come to be passed on 20.06.2020, and therefore, there is inordinate delay snapping live link between his activities and purpose for which the order passed by the authority. However, he has submitted that mere registration of FIR/s for the offence under the Indian Penal Code by itself would not render the petitioner liable in absence of any credible 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. It is further submitted that the offences reflected at serial Nos.1 to 3 are said to have been committed on 23.6.2019 and 30.06.2019 i.e. approximately a year before passing of the preventive detention order.

Those cases are too stale to be relied on for passing an order of preventive detention order on 20.06.2020, therefore, the detaining authority is left with solitary offence in proximate time being offence mentioned at serial no.4. The said offence also cannot be said to be so proximate in absence of any explanation. Therefore, he has submitted that subjective satisfaction recorded by the detaining authority is vitiated and therefore, order of preventive detention is required to be quashed and set aside.

[3.0.] Over and above that, the detaining authority has relied on statements of two anonymous witnesses. He has, drawing attention of the Court to the date of recording statements of anonymous witnesses, submitted that it has come to be recorded on 18.06.2020 and verified by the detaining authority himself on 20.06.2020 whereas the petitioner ordered to be released on bail in last offence 22.11.2019. However, the order of preventive detention has come to be passed on 20.06.2020. He has further submitted that subjective satisfaction recorded by the detaining authority is vitiated, and therefore, order of preventive detention is required to be quashed and set aside.

[4.0.] As against that, Mr. Aditya Jadeja, learned Assistant Government Pleader, trying to salvage the situation on account of delay in passing the order, submitted that, after considering the material placed before the detaining authority and careful examination thereof, the order of preventive detention is passed by the detaining authority, and therefore, it cannot be said that there is any delay in passing an order of detention. He has submitted that the detaining authority, having found the activities of the petitioner prejudicial to the maintenance of public order, has passed the order of detention and no interference is called for, as subjective satisfaction has been validly recorded. He has further submitted that delay of 6 months, cannot be considered to be

inordinate delay so as to call for interference by this Court with the order of detention, and therefore, she has submitted that the present petition is required to be dismissed

[5.0.] 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 FIR/s cannot 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 credible material on record, which shows that the petitioner is acting in any manner prejudicial to the maintenance of public order. It will be fruitful to refer to a decision of the Supreme Court in the case of ***Pushkar Mukherjee &Ors*** Vs. ***The 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:

> "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."

[6.0.] Thus, the activities of the petitioner, based on registered offences, 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.

[7.0.] The cases mentioned at serial Nos.1 to 3 are said to have been committed on 23.06.2019 and 30.06.2019 i.e. approximately a year before passing of the preventive detention order against the petitioner. Those cases are too stale to be considered or relied on for passing an order of preventive detention against the petitioner on 20.06.2020, therefore, the detaining authority is left only with solitary offence in proximate time being offence mentioned at serial no.4. The said offence cannot be said to be so proximate in absence of any explanation. As such, last offence committed on 16.11.2019 and the petitioner ordered to be released on bail vide order dated 22.11.2019, the preventive detention order in respect of the detenue has come to be passed only on 20.06.2020 after about 7 months from the date of his release on bail in last offence committed. Therefore, the delay in passing the order has snapped the alleged activities of the petitioner -detenue prejudicial to the maintenance of public order and purpose for which it is passed. Therefore, on this ground also the subjective satisfaction recorded by the detaining authority is required to be quashed and set aside.

[8.0.] Considering the submissions made by the appearing parties, it is clear that, there is a delay of nearly 7 months in passing the order of detention from the date of his release on bail. Though, the

order of detention cannot be quashed on the ground of delay if it is explained, in absence of plausible explanation for the delay, the order of detention can be quashed on that ground alone. Here in this case there is no explanation at all. Therefore, the subjective satisfaction recorded by the detaining authority stands vitiated and order of detention is required to be quashed and set aside.

[9.0.] In view of the above, the petition succeeds and is accordingly allowed. The impugned order of detention bearing No.PCB/DTN/PASA/388/2020 passed by respondent no.2 – Police Commissioner, Ahmedabad City dated 20.06.2020, 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.

**(UMESH A. TRIVEDI, J)**

PATEL ILA KANTIBHAI / LALJI DESAI