IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9653 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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MOHAMMED TOSIF MOHAMMED LATIF SAIKH
Versus
STATE OF GUJARAT

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Appearance:
O I PATHAN(7684) for the Petitioner(s) No. 1
MR DHAWAN JAYSWAL, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 1 to 3

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

Date : 23/12/2020

ORAL JUDGMENT

[1.0] The present petition is directed under Article 226 of the Constitution of India challenging the preventive detention order dated

22.06.2020 made by the Police Commissioner, Ahmedabad city 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 'cruel person'.

[2.0] Shri O.I. Pathan, learned advocate for the petitioner, submitted that for branding the petitioner – detenue as 'cruel person' as defined under Section 2(bbb) of 'the Act', the detaining authority has relied on solitary offence, being C.R.No.1191007200280/2020 registered with Bapunagar Police Station for the offences punishable under Sections 5, 6, 7, 8 and 10 of the Gujarat Animal Preservation Act, 1954, Section 6(b) of Gujarat Animal Preservation (Amendment) Act, 2017, Section 11(e)(l) of the Prevention of Cruelty to Animals Act, 1960, Section 119 of the Gujarat Police Act, Sections 335, 392 of the Bombay Provincial Municipal Corporations Act and Sections 429 and 114 of the Indian Penal Code.

[3.0] It is submitted that for satisfying the definition of cruel person, a person has to habitually commit an offence under the Bombay Animal Preservation Act, 1954. It is submitted that reading the FIR itself from nowhere it can be concluded that the activities of the detenue is prejudicial to the maintenance of public order. He has further submitted that at best the activities may be in breach of law and order not the public order.

[3.1] It is submitted that pursuant to the registration of offence dated 09.04.2020, the petitioner has come to be released on bail on 18.06.2020 whereas the order of preventive detention has come to be passed on 22.06.2020. Over and above that, according to submission of the learned advocate for the petitioner, there are stereotyped statements of two anonymous witnesses recorded by the sponsoring

authority on 21.06.2020 which came to be verified by the detaining authority on 22.06.2020 and the order of preventive detention has come to be passed on 22.06.2020. He has further submitted that considering the FIR of the registered offence and the record of that case, it is clear that there is no material to arrive at a subjective satisfaction that the activities carried on by the petitioner are in any manner prejudicial or likely to be prejudicial to the maintenance of public order. It is further submitted that those statements are stereotyped statement recorded by the sponsoring authority in every case of preventive detention and verified in the very same manner and thereafter the order of preventive detention has come to be passed. According to the submission of learned advocate for the petitioner, no reliance should be placed on those statements for passing an order of preventive detention.

[3.2] He has further submitted that the co-accused in aforesaid offence was also detained vide order dated 04.06.2020. The co-detenue preferred Special Civil Application No.12425 of 2020 challenging the order of preventive detention passed against him, which came to be allowed and the coordinate Bench of this Court has quashed the detention order vide order dated 02.12.2020. He has submitted that one another offence was also registered against the co-detenue. Other than that, the reasons and grounds of detention in the case of present detenue as also the co-detenue are more or less similar. Therefore, he has submitted that even on the ground of parity also the order impugned is required to be quashed and set aside.

[4.0] As against that, Shri Dhawan Jayswal, learned Assistant Government Pleader, has supported the impugned order of detention. It is submitted that for branding a person as cruel person, not only registered offences are to be considered but any attempts to commit or

abet the commission of offence can also be considered, which is reflected from the statement of anonymous witnesses. However, it would be profitable to refer that the registered offence is committed on 09.04.2020 for which the detenue came to be released on bail by an order dated 18.06.2020. However, the sponsoring authority has recorded the statements of two anonymous witnesses on 21.06.2020, which are verified by the detaining authority on 22.06.2020 and the order of preventive detention has come to be passed on the very same day. It is submitted that apart from the fact that there remains hardly any time to go through the material placed before the detaining authority to satisfy ones conscious and record subjective satisfaction that whether a person is to be preventively detained or not, however nothing much turns on it. The activities of the petitioner is prejudicial to the maintenance of public order, and therefore, the impugned order passed by the detaining authority is just, legal and proper and does not warrant any intervention by this Court.

[4.1] It is further submitted by learned Assistant Government Pleader that since the order passed by the detaining authority in the case of co-detenue was based on the material placed before it and having been subjectively satisfied, even if that detention order is quashed, the present detenue cannot seek parity, and therefore, he has requested to reject the petition.

[5.0] Having heard the 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 cannot have any bearing on the 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 petitioner – 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, 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 Supreme Court in the case of ***Pushker Mukherjee v/ s. State of West Bengal [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 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."

[5.1] Considering the submissions made by the appearing parties, it appears that the registered offence is committed on 09.04.2020 for which the detenue came to be released on bail by an order 18.06.2020. However, the sponsoring authority has recorded statements of two anonymous witnesses on 21.06.2020, which are verified by the detaining authority on 22.06.2020 and the order of preventive detention has come to be passed on that very same day. It appears that, not only recording of statement of anonymous witnesses but the verification thereof is also a mere formality. If it is not incorrect for what is stated in it certainly creates doubt about genuineness of the manner and method of recording and verifying the statement. Therefore, subjective satisfaction recorded by the detaining authority based on such statement of anonymous witnesses and verification thereof is vitiated as no man of normal prudence would record the order of preventive detention based on such statements verified.

[5.2] Since the order of preventive detention is required to be quashed and set aside on the ground that the preventive detention order in the case of co-accused / co- detenue having been quashed by this Court, who is similarly situated with the present detenue in terms of case filed against both of them, it would not be necessary to go into the grounds of detention in detail. More or less, the reasons and grounds of detention are same in respect of the present detenue as also the co-

accused / co-detenue. It would be profitable to refer to a decision of the Supreme Court in the case if ***Alpesh Navinchandra Shah Vs. State of Maharashtra and Ors.*** reported in ***AIR 2007 SC (Supp.) 570*** wherein in the facts of the said case, the petitioner's brother on identical facts had already been released on the ground that there was no sufficient cause for detention of the detenue under Section 3(1) of the COFEPOSA Act. The government had, accordingly, revoked the detention order issued against him considering the report of the Advisory Board and the material on record and in exercise of the powers conferred under Section 8(f) of the COFEPOSA Act, and directed that the petitioner's brother be released forthwith. The Court was of the opinion that the petitioner therein who was also similarly placed, was entitled to the same treatment.

[5.3] Considering the fact that the present detenue as also the co-detenue, who are involved into offence as mentioned in the grounds of detention, as recorded in the order of co-detenue are same and there appears to be statement of anonymous witnesses, who have stated about the activities of the detenue under the promise of anonymity, also finding place in the case of the co-detenue, this Court while considering the case of the co-detenue quashed the order of preventive detention passed against him, and therefore, the present detenue is entitled for the same treatment in view of decision rendered by the Supreme Court in the case of ***Alpesh Navinchandra Shah (Supra)***. The coordinate Bench of this Court while quashing the order of preventive detention in the case of co-detenue came to the conclusion that simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under Section 3(2) of the Act.

[6.0] In view thereof, this Special Civil Application is allowed. The impugned order of detention dated 22.06.2020 bearing No.PCB/DTN/PASA/392/2020 passed by the Police Commissioner, Ahmedabad city – respondent no.2 herein is hereby quashed and set aside. The petitioner - detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute.

(UMESH A. TRIVEDI, J.)

PATEL ILA KANTIBHAI /siji