IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13108 of 2020

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SHIVRAJSINH DILIPSINH GOHIL

Versus

DISTRICT MAGISTRATE, BOTAD

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Appearance:
MR KUNAL S SHAH(5282) for the Petitioner(s) No. 1
MR JAYNEEL PARKH, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 3
RULE NOT RECD BACK(63) for the Respondent(s) No. 4
RULE SERVED(64) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

Date : 23/12/2020

ORAL ORDER

1. Heard learned advocates appearing for the respective parties.
2. The present petition is directed against order of detention dated 17.09.2020 passed by the respondent – detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act") by detaining the petitioner-detenue as defined under section 2(b) of the Act.
3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of solitary offence being C.R. No.11190005200005 of 2020 registered with Paliyad Police Station, Dist.: Botad, under Sections 65E, 116(B), 98(2), 116(B) and 81 of the Prohibition

Act by itself cannot bring the case of the detenue within the purview of definition under section 2(b) of the Act. Further, learned advocate for the detenue submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR/s and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detenue indicate that detenue is in habit of indulging into the

activity as defined under section 2(b) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and detention order deserves to be upheld by this Court.

5. 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 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(b) 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(b) 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 ***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 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. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the 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 thus:

> *"....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(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.*
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> *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...."

7. In ***Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and others,*** *reported in* ***AIR 2003 SC 971,*** the 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 public order. Under the definitions in the Act it is stated that the case 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."

8. In ***Siddharth @ Sindhu Laxmanbhai Thorat v/s. 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."

9. *We may further refer to the judgment of the Apex Court in the case of Arun Ghosh v/s State of West Bengal (1970) 1 SCC 98, wherein, the Apex 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...."

10. *In another case of the Apex Court in the case of Ram Manohar Lohia v/s State of Bihar & others (1966) 1 SCR 709, wherein, the Apex Court has observed 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(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances."

11. In the above judgments, the Apex Court distinguished the public order and law and order and advisability of invoking drastic remedy of preventive detention against citizens.

12. Under the circumstances, in view of the judgment of this Court in the case of Aartiben W/o Nandubhai Jayantibhai Sujnani vs. Commissioner of Police & 2 others and considering the totality of circumstances, in our opinion, the detaining authority has failed to substantiate that the alleged antisocial activities of the appellant detenue adversely affect or are likely to affect adversely the maintenance of public order. The order of detention, therefore, cannot be sustained and deserves to be quashed and set aside."

9. In view of above, I am inclined to allow this petition, because 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. In the result, the present petition is hereby allowed and the impugned order of detention **No.DM/PASA/Case/10/2020** dated **17.09.2020** passed by the respondent – detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case.

10. Rule is made absolute accordingly. The Registry is directed to communicate this order to the concerned jail authority by fax or e-mail.

(VIPUL M. PANCHOLI, J)

SRILATHA