

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 331 OF 2023

Shri Uttam Vajirbhai Patel

Age about 54 years,

Through is brother

Amrut Vajirbhai Patel

age about 49 years, Occ. Agriculturists,

R/at Amali Mandir Falia, Silvassa

... Petitioner

Versus

1. District Magistrate, Dadra and Nagar Haveli
Having office at U.T. Administration of Dadra
and Nagar Haveli and Daman & Diu
Office of the Collector / District Magistrate,
Dadra and Nagar Haveli, Silvassa
2. Director Cum Joint Secretary (Home),
Dadra and Nagar Haveli and Daman and Diu
Having Office at U.T. Administration
of Dadra and Nagar Haveli and Daman and Diu
Home Department, Secretariat, Vidyut Bhawan,
Kachigam, Nani Daman
- 2A. The Superintendent of Police
Dadra and Nagar Haveli, Silvassa
3. Union Territory of Dadra and Nagar Haveli
And Dadra and Diu through it's Administrator
Having office at U.T. Administrator of
Dadra and Nagar Haveli and
Daman and Diu.

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4. The State of Maharashtra

... Respondents

Mr. Balkrishna Joshi a/w Mr. Virendra Pethe for the Petitioner.

Mr. Hiten S. Venegaonkar a/w Mr. Aayush Kedia for Respondent No.1.

Mr. V.B. Konde-Deshmukh, APP for the Respondent–State.

CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.

DATE : APRIL 19, 2023

ORDER - (Per : Sharmila U. Deshmukh, J.):

1. This petition, filed by Amrut Vajirbhai Patel- the brother of the detenu – Uttam Vajirbhai Patel, seeks quashing of the detention order dated 14th December, 2022 passed by the District Magistrate, Dadra and Nagar Haveli under the provisions of Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, “PASA Act”); and the order of approval dated 23rd December, 2022 passed by the Director-cum-Joint Secretary (Home), Dadra and Nagar Haveli and Daman and Diu, under Section 3(3) of the PASA Act, as well as the order dated 24th January, 2023 passed by the Director-cum-Joint Secretary, under

Section 13(3) of the PASA Act.

2. On 14th December, 2022, the detenu was served with the order of detention passed by the District Magistrate, under the provisions of Section 3(2) of the PASA Act, directing the arrest of the detenu and detention at sub-jail Dadra Nagar Haveli and Daman and Diu till further direction. By a communication of even date i.e. 14th December, 2022, the grounds of detention were communicated to the detenu. On 23rd December, 2022, the Administrator, Dadra Nagar Haveli and Daman and Diu approved the order of detention under Section 3(3) of the PASA Act and on 24th January, 2023, after the Advisory Board confirmed the detention order under Section 13(1) of the PASA Act, the detention order was confirmed.

3. Heard Mr. Balkrishna Joshi, learned counsel appearing for the Petitioner, Mr. Venegaonkar, learned counsel appearing for Respondent No.1 and Mr. Konde-Deshmukh, learned APP for the Respondent-State.

4. Learned counsel appearing for the Petitioner submits

that a perusal of the detention order shows that the detention order is based on 18 FIRs listed therein. He would further submit that out of the 18 FIRs, in 14 FIRs the detenu was acquitted and in one FIR "C" Summary Report was filed and in three FIRs, the detenu has been released on bail. He would further submit that the detention order does not take into consideration the bail applications and bail orders and merely relies upon the registration of the FIRs. He would further submit that there was no material placed before the Detaining Authority to arrive at a satisfaction that the detenu is dangerous person and his activity is a prejudicial to the maintenance of the public order. The subjective satisfaction which is a pre-requisite to the order of detention is thus vitiated.

5. Mr. Venegaonkar, has invited the attention of this Court to the affidavit-in-reply, which has been filed on behalf of the Detaining Authority. He would submit that a report was received from the Station House Officer, Silvassa by the Superintendent of Police, Dadra Nagar Haveli, in regard to the petitioner's criminal record, and after following the due procedure

contemplated under the PASA Act, the detention order has been passed and confirmed by the Advisory Board.

6. Considered the submissions and perused the papers and proceedings with the assistance of the learned counsels for the parties.

7. Although a number of grounds have been raised assailing the order of detention, learned counsel for the Petitioner has pressed into service Ground 10 (c) of the Petition, which reads as under:

“c. The Petitioner sates that impugned orders are completely silent about on what basis of the information received from the Police Department, Dadra and Nagar Haveli and on what other records produced before the Ld. authorities they have invoked the provisions of the PASA. The Petitioner states that there is no whisper about the material before the authority and therefore on this ground alone the impugned orders deserves to be quashed and set aside.”

8. It will be appropriate to reproduce the response of the

Detaining Authority in respect of the aforesaid Ground 10 (c). The Detaining Authority has pleaded in its Affidavit in reply that as regards the averments made in the paragraph 10(a), the submissions are the same as stated in paragraph 10(a), however, we find that the paragraph is numbered as “10” and there is no paragraph 10(a), and as such, paragraph 10 is reproduced herein, which reads thus:

“10. So far as the averments made in Para no. 9 are concerned it is to state that they are denied. In this regard, it is to state that the Station House Officer, Silvassa through the Superintendent of Police, DNH has submitted the report in regard to the Petitioner’s criminal record.

Thereafter, considering the said report of Police Department, Silvassa the Petitioner was detained vide District Magistrate, DNH order dated 14.12.2022 after following due procedure prescribed under the Gujarat Prevention of Anti-Social Activities Act, 1985 (the Act) act as extended to Dadra & Nagar Haveli.

The Petitioner has submitted his representation dated 26.12.2022 and accordingly he was also heard by the Advisory Board through Video Conference on 30.12.2022.”

9. A perusal of the detention order indicates that the order is based on 18 FIRs and one non-cognizable complaint lodged against the detenu. The detention order further records that in view of the above and the perusal of material placed on record, the Detaining Authority has come to a satisfaction that the detenu is a dangerous person and threat to the peace and tranquility of the general public in the district of Dadra and Nagar Haveli. The detention order does not take into consideration that in the FIR's numbered at Item Nos. 1 to 14, the detenu has been acquitted. As regards the FIR numbered at Item No.15, "C" summary report has been filed and as regards the FIR's numbered at Item Nos 16 to 18, the detenu has been released on bail. There is no y reference to the bail applications and the bail orders by which the detenu has been enlarged on bail in the FIRs numbered at Item Nos.16, 17 and 18 , which read as under:

Sr. No.	FIR No. & Section	Date of Registration	Crime Head	Status of Arrest	Status of Disposal
.	..	..	..	..	..
.	..	..	..	..	..
16.	17/2021 u/s 406, 420, 34 IPC	28/01/2021	Land Grabbing	Arrested	Pending Trial

Sr. No.	FIR No. & Section	Date of Registration	Crime Head	Status of Arrest	Status of Disposal
17.	18/21 u/s 406, 420, 465, 467, 468, 504, 506 IPC	28/01/2021	Land Grabbing	Arrested	Pending Trial
18.	177/2021 u/s 406, 420, 465, 467, 468, 504, 506 IPC	24/09/2021	Land Grabbing	Arrested	Pending Trial

10. For the Detaining Authority to arrive at a subjective satisfaction that the detenu is a dangerous person within the meaning of Section 2(c) of the PASA Act, and that his activity is a prejudicial to the public order, all material which are vital for the Detaining Authority to arrive at a subjective satisfaction is required to be placed by the Sponsoring Authority. In the present case, we find that the Sponsoring Authority has submitted a report to the Detaining Authority and upon considering the report the order of detention has been passed. This fact is not disputed and infact, has been pleaded in paragraph 10 of the affidavit-in-reply. The Detaining Authority was unaware that in respect of three FIRs, which are numbered at Item Nos.16, 17 and 18 of the list of FIRs, the detenu had been released on bail. Non-furnishing all the relevant materials to the Detaining Authority, vitiates the subjective

satisfaction which is necessarily to be arrived at after considering entire material on record. It was necessary that the bail applications and the bail orders be placed before the Detaining Authority to enable the Detaining Authority to apply its mind and weigh all the materials in the right perspective before arriving at a subjective satisfaction that the detenu is a dangerous person and his activities are prejudicial to public order. There was suppression of the material fact that the detenu has been enlarged on bail and the Detaining Authority was given to understand that the criminal cases were pending trial.

11. At this stage, it would be appropriate to refer to the decision of this Court in the case of **Alakshit s/o. Rajesh Ambade (supra)**. This Court has held that it is well settled law that the grounds on which an accused, and a proposed detenu, is granted bail also forms important part of the material available against such a person and therefore, it is the duty of the Detaining Authority to consider that material. In the facts of that case, as the grounds on which the bail was granted to the Petitioner was not

considered by the Detaining Authority, the detention order was termed perverse and bad in law.

12. It will be profitable to refer the decision of the Apex Court in *Sushanta Kumar Banik vs. State of Tripura and Others* [2022 SCC OnLine SC 1333], wherein the Apex Court had allowed the appeal on two grounds, one of which was that the Detaining Authority had remained oblivious to the fact that in both the criminal cases relied upon by the Detaining Authority for the purpose of passing of detention order, the detenu was ordered to be released on bail by the Special Court. The Apex Court after considering the various decisions has held in paragraphs 27, 28 and 29 as under:

“27. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before

issuing the detention order.

28. It is clear to our mind that in the case on hand at the time when the detaining authority passed the detention order, this vital fact, namely, that the appellant detenu had been released on bail by the Special Court, Tripura despite the rigours of Section 37 of the NDPS Act, 1985, had not been brought to the notice and on the other hand, this fact was withheld and the detaining authority was given to understand that the trial of those criminal cases was pending.

29. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.”

13. Applying the proposition of law laid down by the aforesaid judicial pronouncements to the facts of the present case, we find that the entire material was not placed before the

Detaining Authority and admittedly only a report of Station House Officer was placed for consideration. In the absence of relevant material in the form of bail applications and bail orders being placed for consideration by the proposing authority, the satisfaction arrived at by the Detaining Authority stands vitiated.

14. In view of the aforesaid discussion, we pass the following order.

ORDER

1. The petition is allowed and the impugned order dated 14th December, 2022 passed by the Respondent No.1 – District Magistrate, Dadra and Nagar Haveli, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985, as well as the order dated 23rd December, 2022, passed by the Respondent No.2– Director Cum Joint Secretary (Home) under Section 3(3) of the said Act are quashed and set aside.
2. The petitioner to be released forthwith, if not required in any other case.

15. Rule is made absolute in the above terms.
16. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.