IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3762 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE

and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

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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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HITENDRA ALIAS PAKLO RAMESHBHAI CHAUHAN THROUGH HIS MOTHER CHAUHAN SAVITABEN RAMESHBHAI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR HANNAN A QURESHI(11351) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 1
MR. ROHAN RAVAL, AGP, for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.Y. KOGJE**
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 03/04/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. This petition under Article 226 of the Constitution of India is inter alia filed for following prayer:-

> "*(B) to issue a writ of habeas corpus and/or any other writ, order or directions, quashing the order of detention bearing no.PCB/DTN/PASA/461/2023 dated 01.09.2023 passed by respondent no.1-Police Commissioner, Ahmedabad City, Ahmedabad and to set the petitioner at liberty.*

2. The present petition is directed against order of detention dated 01.09.2023 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(c) of the Act. Under the order of detention dated 01.09.2023 passed by the Commissioner of Police, Ahmedabad by which the petitioner has been detained as a 'dangerous person' based on two offenses of vehicle theft registered with Gomtipur Police Station.

3. Learned advocate for the petitioner submitted that there is no direct evidence connecting the petitioner with the offense and therefore, two offenses registered against the petitioner cannot be considered for the purpose of detention. Learned advocate submitted that though the petitioner has been detained as a dangerous person, there is no statement of secret witnesses recorded to treat him as a habitual offender and creating breach in public order.

3.1 Learned advocate for the petitioner lastly submitted that the petitioner has been enlarged on regular bail by the court of competent jurisdiction and thereafter, the detaining authority has not resorted to the lesser drastic remedy available instead of detaining the present petitioner.

4. As against this, learned Assistant Government Pleader has objected to the grant of the petition by submitting that though the petitioner has been arraigned as an accused only on two offenses however, he has a previous history and therein the petitioner is also detained previously and therefore, despite the indulgence shown by this Court, the petitioner has continued to commit offense falling in Chapter XV and XVI of the IPC and therefore, falling within the definition of dangerous person.

5. In rejoinder, learned advocate for the petitioner has drawn attention of this Court to the Annexure-B which is an oral judgment dated 08.06.2022 in Special Civil Application No.4951 of 2022 passed by this Court by which the previous detention of the petitioner has been set aside.

6. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained as a dangerous person by an order dated 01.09.2023 by the detaining authority, Commissioner of Police, City Ahmedabad and in the grounds of detention reliance is placed upon two offenses, details of which are as under:-

Sr. No	Police Stand and C.R.Number	Sections	Date of Arrest/ Date of Bail
1.	Gomtipur Police Station C.R.No.11191018230771/ 23 dated 23.06.2023	379 of IPC	14.08.2023 28.08.2023
2.	Gomtipur Police Station C.R.No.11191018230980/ 23 dated 03.08.2023	379 of IPC	13.08.2023 28.08.2023

7. From the aforesaid table, it is apparent that the petitioner was arrested in first offense on 13.08.2023 and immediately thereafter, in the second offense on 14.08.2023 and in connection with both the offenses, the petitioner was enlarged on regular bail by an order dated 28.08.2023. Thereafter, though the petitioner was released on bail, no efforts have been made by the detaining authority or the sponsoring authority for cancelling the bail granted so as to prevent the petitioner from indulging in any antisocial activity.

8. The Court has taken into consideration an FIR relied upon by the detaining authority, where in both FIRs, the petitioner has not been named and moreover, there is no evidence which can directly relate the petitioner to the offense and therefore, in the opinion of the Court, these two offenses cannot be termed to have disturbed the public order.

9. The Court has also taken into consideration the fact that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction and the detention order does not reflect application of mind to the fact that the Detaining Authority has considered cancellation of bail to be ineffective method to curtail activities of the petitioner. Therefore, in the opinion of the Court, the Detaining Authority not having taken into consideration the cancellation of bail option.

10. Subjective satisfaction would stand vitiated as is held in recent decision of the Hon'ble Supreme Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors**. Reported in, **2023 (9) SCC 633** , the Hon'ble Supreme Court has made following observations in para 19 as under:-

"19. In any case, the State is not without a remedy, as in case

the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.

11. With regard to the submission of learned advocate that the petitioner was previously also detained, it would be appropriate to refer to Special Civil Application No.4951 of 202, wherein the said detention of the petitioner was set aside by oral judgment dated 08.06.2022 by the Co-Ordinate Bench of this Court.

12. In view of above, we are 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.

13. In the result, the present petition is hereby allowed and the impugned order of detention dated **01.09.2023 being No.PCB/DTN/PASA/461/2023** 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.

14. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH