IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15240 of 2023

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 ?	
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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AVDHESH S/O. RAMACHAL @ RAMPAL SAHANI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. RAJENDRA D JADHAV(10026) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2
MR RH RAVAL AGP for the Respondent(s) No. 3

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

Date : 24/04/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. This petition under Article 226 of the Constitution of India is filed for the following relief;

> "(B) That this Hon'ble Court be pleased to quash and set aside the detention order being PCB / PASA / DTN / 673 of 2023 dated 12.08.2023 passed by the respondent No.2 herein and executed on 12.08.2023 which is at Annexure-A by way of issuing appropriate writ, order or direction in the interest of justice."

2. Though an earlier order dated 06.12.2023 has been brought to our notice, learned advocate for the petitioner has submitted that the matter be taken up, as the petitioner has been under detention since 12.08.2023 and the Court has already taken up the detention matters of the month of October 2023 *in seriatim*.

3. Learned advocate for the petitioner has contended that the order of detention is challenged on the ground that there is no live-link between the offences which were registered inter-se, as the first offence at Pandesara Police Station was registered in the month of December 2022 whereas, the subsequent two offences were registered after almost a period of six months on 21.05.2023 and the last offence was registered in the month of July 2023 and in each of these offences, the petitioner has been enlarged on regular bail by the Court of competent jurisdiction.

4. Learned advocate submitted that even if the contents of each of the FIRs is taken into consideration, then also the act attributed to the petitioner cannot be termed to affect the even tempo of life leading to the breach of public order.

5. Learned advocate has lastly submitted that the subjective satisfaction would stand vitiated as the statements of the secret witnesses were recorded at the eleventh hour and were verified by the detaining authority on the very day on which the order of detention has been passed and therefore, the exercise of scrutinizing the documents along with the grounds of detention would be rendered as a mechanical exercise.

6. Learned AGP objected to the grant of petition by submitting that the petitioner has indulged in offences under Chapters-XVI and XVII of IPC and in view of his continuous indulgence in offence of similar nature, the detaining authority was justified in treating the petitioner as habitual offender, which is falling within the definition of "dangerous person" as contemplated u/s.2(c) of the PASA Act.

7. Learned AGP has also indicated to the Court that apart from four offences relied upon by the detaining authority, several other offences have been registered against the petitioner and therefore, the order of detention is required to

be maintained.

8. Having considered the rival submissions of the parties and having perused the documents on record, the petitioner has been detained as a "dangerous person" by the order of detention dated 12.08.2023 passed by the Commissioner of Police, City: Surat. The grounds of detention would indicate that the detaining authority has relied upon four offences registered against the petitioner with Pandesara Police Station, the details of which, in tabular form, are as under;

Sr No	Police Station, C.R. No., Date	Section/s	Date of Arrest / Date of release on bail
1	Pandesara Police Station, C.R.No.11210045225153.	Sections 25(1)a, 25(1-B)a and 29 of the Arms Act.	11.12.2022 / 21.12.2022
2	Pandesara Police Station, C.R.No.11210045232241.	Sections 323, 324, 504, 506(2) and 114 of IPC and section 135(1) of G.P. Act.	23.05.2023 / 29.05.2023
3	Pandesara Police Station C.R.No.11210045232254.	Sections 323, 504, 506(2) and 114 of IPC.	29.05.2023 / 30.05.2023
4	Pandesara Police Station, C.R.No.11210045233078.	Sections 323, 392, 452, 504, 506(2), 427 of IPC and section 135(1) of G.P. Act.	13.07.2023 / 11.08.2023

9. A perusal of the aforesaid details would indicate that the petitioner was arrested in connection with the first offence on 10.12.2022 and was enlarged on regular bail on 21.12.2022. Thereafter, in connection with the two offences which were registered separately on 21.05.2023 with the same police station, the petitioner was arrested on 23.04.2023 and 29.05.2023 whereas, he was enlarged on bail on 29.05.2023 and 30.05.2023 respectively.

10. It is pertinent to observe that as and when the petitioner was enlarged on regular bail by the Court of competent jurisdiction, no efforts appear to have been made by the sponsoring authority to object the grant of bail in view of his involvement in the previous offences though the sponsoring authority was the same. The order of detention also does not indicate that the detaining authority has applied its mind and has subjectively satisfied itself that the lesser drastic remedy of cancellation of bail was not an effective remedy to curtail the so-called anti-social activities of the petitioner. In absence of anything on record to substantiate such consideration and there being no reference about the same in the grounds of detention, the subjective satisfaction of the detaining authority would stand vitiated to that extent.

11. In this regard, it would be appropriate to refer to the

decision of the Apex Court in the case of **Shaik Nazeen v/s. State of Telangana and Ors.** rendered in **Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 2022** dated 22.06.2022, wherein, in paragraph-17, it has been observed as under:-

> "17. 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."

12. The Court has also taken into consideration the fact that the first offence was registered in December 2022 whereas, the other two offences were registered on 21.05.2023 wherein, the gap between the two offences is of six months. In the opinion of the Court, the live-link between the two offences, i.e. the so-called anti-social activities of the petitioner, appears to have been snapped and therefore, the petitioner would not fall in the definition of "habitual offender".

13. With regard to the submission made by learned AGP that the petitioner is an accused in several other offences, there is nothing on record to suggest that the detaining authority has referred to or relied upon the fact that the petitioner is an

accused in 16 other offences nor any affidavit to that effect has been filed in this matter and therefore, such submission cannot be taken into consideration.

14. 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.

15. Consequently, the impugned order of detention dated 12.08.2023 passed by the respondent-authority is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

PRAVIN KARUNAN