

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18131 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****and****HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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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VIJAY @ BHURI BHAGA @ BHURIYO S/O BHUPATBHAI MAKVANA

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MS KRUPA K BELADIYA(13979) for the Petitioner(s) No. 1

MR. ROHAN RAVAL, AGP, for the Respondent(s) No. 1

GOVERNMENT PLEADER for the Respondent(s) No. 3

SERVED BY RPAD (R) 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 : 18/03/2024

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) Your Lordships Please To Be quash and set aside the detention order bearing No.PCB/PASA/DTN/820/2023 dated 30.09.2023, Annexure-A to this petition and further be pleased to release the detenue forthwith, and”

2. The present petition is directed against order of detention dated 30.09.2023 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-detenu as defined under section 2(c) of the Act. Under the order of detention dated 30.09.2023 passed by the Commissioner of Police, City Surat by which the petitioner has been detained as a ‘dangerous person’ based on two offenses registered with Kapodra and Utran Police Station.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that the detaining authority has relied upon two offenses which are registered in the year 2021 and 2023 respectively and therefore, there is no live link between two offenses to treat the petitioner as a habitual offender and therefore, treat him as a "dangerous person". Learned advocate has submitted that the detaining authority has acted in hot haste and has not perused the documents annexed alongwith the grounds of detention as the detaining authority has undertaken the verification of the statements of secret witnesses which is part of the proposal on 30.09.2023 and on the day i.e. on 30.09.2023, the order of detention is passed.

4. As against this, learned Assistant Government Pleader has objected to the grant of the petition by submitting that the

petitioner has been arraigned as an accused in two IPC offenses which are falling under Chapter XVI and XVII of the IPC and therefore, the detaining authority has rightly treated the petitioner to be a dangerous person. Learned AGP submitted that the statements of the secret witnesses were already recorded and only the verification was carried out on 30.09.2023 and therefore, it cannot be said that the detaining authority had no occasion to apply its mind and arrive at subjective satisfaction.

5. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained as a dangerous person by the impugned order detention dated 30.09.2023 by the detaining authority, Commissioner of Police, City Surat. The detaining authority in the grounds of detention has referred to and relied upon two offenses registered with Kaproda and Utran Police Stations, the details of which in tabular form are as under:-

Sr. No	Police Stand and C.R.Number	Sections	Date of Arrest/ Date of Bail
1.	Kapodra Police Station Part-A 11210022212649 23.07.2021	365, 384, 386, 387, 506(2) and 114 of the IPC	25.07.2021 26.10.2021
2.	Utran Police Station Part-A 11210065230536 20.08.2023	307, 386, 324, 323, 506(2), 294(B)and 114 of the IPC and Section 135 of the GP Act	25.08.2023 28.09.2023

6. The perusal of the aforesaid chronology would indicate that the FIR registered at Kapodra Police Station is of the offense dated 23.07.2021, wherein the petitioner was arrested on 25.07.2021 and thereafter released on bail on 26.10.2021, whereas the second offense was registered on 20.08.2023 for which the petitioner was apprehended on 25.08.2023. The Court is of the view that the gap between first offense and the triggering offense is two years and therefore, it cannot be said that the petitioner is continuously indulging in IPC offenses, thereby treating him as a habitual offender.

7. In the opinion of the Court and as is held by the Apex Court in case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in **AIR 2022 S.C. 4715**, there does not appear to be live link between the first offense and the second offense and therefore, the subjective satisfaction of the detaining authority in treating the petitioner as a habitual offender and consequently, a dangerous person would stand vitiated.

8. The Court has taken into consideration the fact that the petitioner was released by Court of appropriate jurisdiction on regular bail and thereafter, neither the sponsoring authority or the detaining authority has referred to any efforts being made to cancel the bail of the petitioner to prevent him from indulging in any antisocial activities.

9. 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.

10. The grounds of detention do not reflect an application of mind to the fact that the passing the order of detention was only remedy available and there was no scope of the detaining authority resorting to cancellation of bail. In this view of the matter also, the subjective satisfaction of the detaining authority would stand vitiated.

11. The Court has taken into consideration the fact that the detaining authority alongwith the grounds of detention has referred to and relied upon the statements of secret witnesses recorded on 29.09.2023. These statements were the part of the proposal made by the sponsoring authority and forwarded to the detaining authority where the detaining authority on 30.09.2023 had recorded the verification with regard to the statements of the secret witnesses and thereafter immediately on the very day, the order of detention has been passed. In the opinion of the Court, the detaining authority did not have sufficient time to apply its mind to the record which is alongwith the grounds of detention forwarded by the sponsoring authority, undertake the exercise of verification of the statements of the secret witnesses and immediately passed the order of detention. In absence of such subjective satisfaction, the order of detention is required to be quashed.

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 **30.09.2023 being No.PCB/PASA/DTN/820/2023** 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