

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17969 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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VARUN @ BABO BABUBHAI AMIBHAI DESAI

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR VIRAJ B KHATANA(10416) for the Petitioner(s) No. 1

MR. YUVRAJ BRAHMBHATT, 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 : 04/03/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

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

“(A) YOUR LORDSHIP may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction releasing the present petitioner from illegal detention under Gujarat Prevention of Anti-Social Activities Act, 1985 pursuant to order dated 22.09.2023 passed by respondent No.2 (at ANNEXURE-A hereto.”

2. The challenge is to the order of detention dated 22.09.2023 the detaining authority namely Commissioner of Police, City Ahmedabad, by which the petitioner has been detained as a “dangerous person” based on two offences registered against him.

3. Learned advocate for the petitioner has challenged the order of detention on two grounds firstly, that the offenses in which the petitioner has been involved are arising out of private dispute and has no connection with disturbance in public order. Secondly, learned advocate has argued that the first offense was registered in December 2022, whereas the second offense was registered in August 2023 and therefore, there was a time gap of almost eight months and therefore, the petitioner cannot be treated to be a habitual offender to attract the definition of a dangerous person.

4. As against this, learned Assistant Government Pleader by objecting the petition submitted that as the petitioner has been involved in two IPC offenses falling within the Chapter of 16 and 17 of IPC, and therefore, it would fall within the definition of a dangerous person as contemplated under the PASA.

5. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained by the impugned order of detention dated 22.09.2023 passed by the detaining authority-Commissioner of Police, Ahmedabad City. While passing the aforesaid order, the detaining authority has relied upon

two offense, registered with Ranip and Ghatlodiya Police Station respectively. The details of which are in tabular form as under:-

Sr. No	Name of Police Station, CR No. and date	Sections	Date of arrest and Date of bail order
1	Ranip Police Station, CR.No1119100222066/22 Date 27.12.2022	326, 325, 323, 294B, 506(2), 507, 143, 144, 148 and 149 of the IPC, under Sections 3(1) of the Atrocity Act and Section 135(1) of the GP Act	11.09.2023 22.09.2023
2	Ghatlodiya Police Station, CR.No.1119104423027 9/23 Date 30.08.2023	323, 384, 427, 294B and 506(2) of the IPC	10.09.2023 11.09.2023

6. The Court finds that the nature of offense for which the petitioner has been arraigned as an accused in the offense registered at Ranip Police Station where the petitioner has not been named as an accused however, during the course of investigating, the name of the petitioner was revealed and therefore, arraigned as an accused. However, no act has been attributed to the petitioner. Not only that, it appears to be the FIR is Registered on account of dispute between co-accused and the complainant pertaining to the handing over of certain revenue documents. In the opinion of the Court, the FIR therefore, registered was on account of an incident at the root of private dispute and would therefore, have no bearing on the prevailing public order or disturbing the even tempo of life. Therefore, as is held by the Apex Court in case of ***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."

7. The Court has taken into consideration the argument of learned advocate with regard to the fact that the first offense registered at Ranip Police Station was of December 2022, whereas in the offense registered at Ghatlodiya Police Station was of 30.08.2023, thereby, gap of nine months and therefore, live link between two offenses are snapped with the passage of nine months of period and therefore, it cannot be said that the petitioner has been continuously indulging in IPC offenses to be treated as a habitual offender and consequentially a dangerous person.

7.1 The Court finds that there are not statements of secret witnesses which would support the subjective satisfaction of the detaining authority to treat the activities of the petitioner to damage the public order.

8. No need to say when a citizen is deprived of his personal liberty by keeping him behind the bar under the provisions of the

PASA law without trial by the competent court, the detaining authority is required under the law to justify its action and in absence of reply/counter affidavit, the averments made in the petition remain unchallenged and uncontroverted.

9. 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.

10. In the result, the present petition is hereby **allowed** and the impugned order of detention dated 22.09.2023 passed by the respondent-detaining authority is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH