IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18558 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE Sd/-

and
HONOURABLE MR. JUSTICE SAMIR J. DAVE Sd/-

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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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NANJIRMOHAMMED ABBASBHAI @ AJITBHAI PUNJABHAI VAGHELA
THROUGH SAJIDHUSEN PRADIPSINH VAGHELA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
RAZIN S. ZEENA for O I PATHAN(7684) for the Petitioner(s) No. 1
MR. ROHAN H. RAVAL, AGP for the Respondent(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2
GOVERNMENT PLEADER 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 : 04/04/2024

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

1. This petition under Article 226 of the Constitution of India is filed with prayers as under:

> *"(A) YOUR LORDSHIP be pleased to issue appropriate writ, order or directions of this Hon'ble High Court, quashing and setting aside the detention order dated 07/10/2023 at Annexure 'A' to the petition placing the petitioner under preventive detention, in purported exercise of their powers under the Gujarat Prevention of Antisocial Activities Act, 1985, as being illegal, null and void and further be pleased to released the petitioner forthwith;*
>
> *(B) YOUR LORDSHIPS be pleased to dispense with filing of affidavit in support of this petition as the facts are taken from record and also the petitioner is in jail undergoing detention order in question;*
>
> *(C) YOUR LORDSHIPS be pleased to release the petitioner from his detention pending the admission, hearing and final disposal of this petition;"*

2. The Detaining Authorities have detained the brothers in connection with the similar offences, though the brothers have preferred separate petitions.

3. The present petition is directed against order of detention dated 07-10-2023 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.

4. Essentially challenge is made to the order of detention dated 07-10-2023, where the petitioner has been detained as 'Dangerous person' on the grounds of three F.I.R. registered against him by the Detaining Authority namely the District Magistrate, Vadodara.

4.1 Learned advocate for the petitioner has submitted that the petitioner has challenged the order of detention on the ground that the Detaining Authority has relied upon stale offences, as the offences referred to in the grounds of detention are of 2021, whereas the detention order is passed in October, 2023.

4.2 Learned advocate for the petitioner has also challenged the order of detention on the ground that three offences are registered at the time gap of almost two years; as the first two offences were registered in the month of August-October, 2021, whereas the trigerring offence was registered in the month of September, 2023 i.e. after period of two years.

4.3 Learned advocate for the petitioner has submitted that nature of offence and the role attributed to the petitioner does amount to breach of public order, as each of the FIR registered against the petitioner arising out of private disputes and in fact with regard to the first offence, there is also cross FIR registered by father of the petitioner.

4.4 Learned advocate for the petitioner has submitted that the order of

detention is passed on the very next day on which the petitioner was enlarged on regular bail and that there is no statement of secret witnesses to substantiate the fact of the petitioner being dangerous to the public order.

5. As against this, learned AGP for the respondent State has objected to the petition on the ground that the petitioner is involved in three offences and that offences would fall within Chapter-XVI and XVII of the IPC covered under definition of 'Dangerous Person' as contemplated in definition under the provisions of PASA Act. It is submitted that not only that reference to the FIR would indicate that the petitioner is indulging in mob activities and therefore, disturbing the public order.

6. Having heard learned advocates for the parties and having perused documents on record, it appears that the petitioner has been detained as 'Dangerous Person' by the order of detention dated 07.10.2023 by the Detaining Authority namely District Magistrate, Vadodara and along with the order of detention, grounds of detention is reflected that the Detaining Authority has relied upon three offences, which are as under:

Sr. No.	Name of Police Station	F.I.R. No., Date	Section
1.	Bhadarva Police Station	C.R.No.11197006210982/2021, Date: 23-08-2021	Section-143, 147, 148, 149, 323, 324, 294(B), 506(2) of I.P.C.
2.	Bhadarva Police Station	C.R.No.11197006211141/2021, Date: 01-10-2021	Section-143, 147, 149, 323, 307, 294(B), 506(2), 427 of I.P.C.
3.	Manjusar Police Station	C.R.No.11197011230789/2023, Date: 28-09-2023	Section-143, 147, 148, 149, 323, 324, 337, 506(2), 295(a), 153(a), 120(b) of I.P.C., Section-135 of G.P. Act

6.1 The details mentioned herein above would indicate that two offences relied upon by the Detaining Authority were registered at Bhadarva Police Station on 23-08-2021 and 01-10-2021 respectively and last offence was registered at Manjusar Police Station and the Detaining Authority has therefore, relied upon stale offences of the year 2021, where the detention order is passed exactly after period of two years.

6.2 It is open for the Detaining Authority to refer to the stale offences, where so called anti-social activity, the detenue has been detained in the month of October, 2023 and therefore, subjective satisfaction of the Detaining Authority is vitiated to that extend.

6.3 The Court has taken into consideration the submission of learned Advocate for the petitioner that live-link between three offences is snapped as trigerring offence, which was registered in September, 2023, which was registered after almost period of two years of first two offences. The Apex Court in the case of ***Sushanta Kumar Banik Vs. State of Tripura***, reported in ***AIR 2022 S.C. 4715*** has observed as under;

> *"11. We are persuaded to allow this appeal on the following two grounds:*
>
> *(i) Delay in passing the order of detention from the date of proposal thereby snapping the "live and proximate link" between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.*
>
> *(ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital fact*

of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

DELAY IN PASSING THE ORDER OF DETENTION

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in ***Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403*** *, wherein the following observation is made:*

"Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing."

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

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20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same."

6.4 There is snapping of the live-link. Therefore, the petitioner cannot

be deemed to be habitual offender to be treated as Dangerous Person as defined under section 2(c) of the Act.

6.5 The Court has taken into consideration the additional ground that the petitioner was enlarged on regular bail on 06-10-2023 in connection with the offence registered with Manjusar Police Station and very next day i.e. on 07-10-2023, the order of detention has been passed.

6.6 Perusal of the documents, which are annexed along with the grounds of detention would indicate that there are several documents, which will have to be scrutinized by the Detaining Authority before arriving at subjective satisfaction and as there is only gap of one day, it appears that mechanical exercise has been undertaken by the Detaining Authority to arrive at subjective satisfaction in this regard.

6.7 The Court has also considered the fact that several documents, which are placed along with the ground of detention are illegible. Reference can be made to Page No.109, 111, 113, 115 and 116, which are the documents on which the Detaining Authority has relied to arrive at subjective satisfaction, but the copies thus supplied to detenue are illegible, thereby depriving the petitioner from his legitimate right to make representation to the Authorities.

6.8 The Apex Court in the case of ***State of Manipur Vs. Buyamayum Abdul Hanan @ Anand***, reported in **JT 2022 (10) SC, 264** has clearly held as under:

> *"21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority*

indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law.

22. It is the admitted case of the parties that respondent no.1 has failed to question before the detaining authority that illegible or blurred copies were supplied to him which were relied upon while passing the order of detention, but the right to make representation being a fundamental right under Article 22(5) of the Constitution in order to make effective representation, the detenu is always entitled to be supplied with the legible copies of the documents relied upon by the detaining authority and such information made in the grounds of detention enables him to make an effective representation.

23. Proceeding on the principles which have now been settled by this Court, it was specifically raised by the respondents in their writ petition and the reference has been made in para 9 of the petition referred to(supra) and in the pleadings on record, there was no denial in the counter filed by the appellants before the High Court that the documents which were supplied and relied upon by the detaining authority were legible and that has not denied respondent no.1 in making effective representation while questioning the order of detention and once this fact remain uncontroverted from the records as being placed before the High Court in writ petition filed under Article 226 of the Constitution and the legal principles being settled, we find no substance in the submissions made by learned counsel for the appellants that merely because respondent no. 1 has failed to raise this question before the detaining authority which go into root of the matter to take away the right vested in the appellant/detenu in assailing the order of detention while availing the remedy available to him under Article 226 of the Constitution of India.

24. In other words, the right of personal liberty and individual freedom which is probably the most cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigors of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the

Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment."

6.9 Additional ground of non-application of mind has also surfaced, wherein checklist placed before the Detaining Authority would refer to in the tabular form, offence registered at Manjusar Police Station, wherein registration of the offence is dated 28-09-2023. However, in the 6th column of the table, which refers to the arrest and grant of bail date mentioned is of 02-09-2021 and 03-09-2021 respectively, which is much prior to the registration of the FIR.

7. 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. In the result, the present petition is hereby allowed and the impugned **order of detention dated 07-10-2023** passed by the respondent – detaining authority is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if not required in any other case.

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

Sd/-
(A.Y. KOGJE, J)

Sd/-
(SAMIR J. DAVE,J)

PARESH SOMPURA