IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18965 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 ?	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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MOHAMADRIZWAN MOHAMADIQBAL ANSARI THROUGH RAJIYABANU MOHAMAD IQBAL ANSARI
Versus
COMMISSIONER OF POLICE, AHMEDABAD CITY & ORS.

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Appearance:
MR SANJAY PRAJAPATI(3227) 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 : 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) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, directions or order quashing and setting aside the impugned order of detention Dt.d. 07/10/2023, passed by the respondent no.1 at Annexure "A" herein, and further your Lordships be pleased to issue a writ of habeas corpus or any other appropriate writ, directing the respondent authority to release the petitioner detainee forthwith from detention.*

2. 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. Under the order of detention dated 07.10.2023 passed by the Commissioner of Police, Ahmedabad by which the petitioner has been detained as a 'dangerous person' on account of his involvement in two offenses registered with Rakhiyal Police Station.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that between two offenses relied upon by the detaining authority, there is no live link as one is registered in the May 2022, whereas second is registered in October 2023. Learned advocate further submitted that the petitioner has been enlarged on regular bail by the Court of competent jurisdiction, thereafter, the sponsoring authority or police authority has not initiated any proceedings for cancellation of bail.

3.1 Lastly, learned advocate for the petitioner submitted that the order is passed on the very next day of release of the

petitioner on regular bail and there are no statements of secret witnesses to substantiate his involvement in an activity which is prejudicial to the public order.

4. As against this, learned Assistant Government Pleader has objected to the grant of the petition by submitting that the petitioner has been rightly treated as a dangerous person as he has been involved in two offenses registered with Rakhiyal Police Station under Chapter XV and XVI of the IPC and therefore, he is falling within the definition of 'dangerous person' being a habitual offender.

5. Heard learned advocates for the parties and perused the documents placed on record. The petitioner has been detained as a dangerous person by impugned order dated 07.10.2023 by the detaining authority, Commissioner of Police, City Ahmedabad. The grounds of detention would indicate that the detaining authority has relied upon two offenses registered with Rakhiyal Police Station, details of which are as under:-

Sr. No	Police Stand and C.R.Number	Sections	Date of Arrest/ Date of Bail
1.	Rakhiyal Police Station C.R.No.11191029220324/23 dated 29.05.2022	324, 114 of the IPC and Section 135(1) of GP Act	31.05.2022 31.05.2022
2.	Rakhiyal Police Station C.R.No.11191029230398/23 dated 27.09.2023	332, 323, 294B, 506(2) and 114 of IPC and under Section 135(1) of the GP Act.	05.10.2023 06.10.2023

6. The Court has taken into consideration the nature of offenses which refers to two sporadic incidents which in the opinion of the Court, are of private nature and would not affect the public order. Not only that, two offenses are registered apart by one and half year and therefore, there does not appear to be any live link between two offenses to treat the petitioner as a habitual offender falling within the definition of 'dangerous person' as contemplated under Section 2(c) of the PASA.

7. The Court has lastly considered the fact that the petitioner in each of the offenses was immediately enlarged on regular bail by the Court of competent jurisdiction however, neither the sponsoring authority or the police authorities have objected to the grant of bail in second offense nor there is any proceeding undertaken for cancellation of bail and therefore, as is held by the Apex Court in case of **Shaik Nazeen v/s. State of Telanga and Ors**. reported in, **2023 (9) SCC 633**, as the detaining authority has not considered the lesser drastic remedy, the subjective satisfaction in this regard would stand vitiated. 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.*

8. 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.

9. In the result, the present petition is hereby allowed and the impugned order of detention dated **07.10.2023 being No.PCB/DTN/PASA/551/2023** 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.

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

(A.Y. KOGJE, J)

(SAMIR J. DAVE,J)

SIDDHARTH