IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19989 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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SAHID MUSTAKIM SHAIKH THROUGH HIS BROTHER SHAIKH MAJID MUSTAKIM

Versus

STATE OF GUJARAT & ORS.

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Appearance:
BHARATKUMAR A DESAI(8513) for the Petitioner(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 2,3
MR YD BRAHMBHATT AGP for the Respondent(s) No. 1

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

Date : 06/05/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE SAMIR J. DAVE)

1. By way of this petition, the petitioner has prayed to quash and set aside the order of detention dated **26.10.2023** passed by the respondent No.2, Commissioner of Police, Vadodara City, in exercise of powers under sub-section (1) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the PASA Act') and to set the detenue free from detention.

2. Learned advocate for the detenue submitted that the order of detention has been passed on the basis of registration of a solitary offence under the Gujarat Prohibition Act. It was submitted that registration of a solitary offence by itself cannot bring the case of the detenue within the purview of the definition under section 2(b) of the Act.

2.1 It is submitted that the illegal activity likely to be carried out or alleged to have been carried out by the detenue cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be a breach of law and order situation. It was submitted that it is not possible to hold on the basis of the facts of the present case that the activity of the detenue with respect to the criminal case in question had affected the tempo of society causing threat to the very existence of normal and routine life of people at large

or that, on the basis of the criminal case, the detenue had put the entire social apparatus in disorder making it difficult for the whole system to exist as a system governed by rule of law by disturbing public order.

3. Learned AGP objected to the grant of petition and submitted that there is sufficient material against the detenue, which indicates that he is in the habit of indulging into illegal activity, as defined under section 2(b) of the Act and considering the facts of the present case, the detaining authority has rightly passed the order of detention and hence, the present petition may not be entertained.

4. Having heard learned advocates for the parties and on perusal of the material on record, this Court is of the view that even if the allegations levelled against the detenue are taken at its face value, it would be difficult to comprehend that the alleged activities of the petitioner are a threat to "public order". The detenue could be proceeded with under the relevant provisions of the Act; however, it would not bring him within the definition of "bootlegger", as defined under section 2(b) of the PASA Act. It has to be shown by relevant material that the detenu is a threat to the society and that his acts cause disturbance to "public order". Breach of peace or public tranquility may lead to law and order situation but, it

would not lead to disturbance of "public order".

5. In this connection, it will be fruitful to refer to a decision of the Supreme Court in ***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."*

6. In this case, it does not appear that subjective satisfaction has been arrived at by the detaining authority before passing the impugned order of detention. In connection with the FIR in question, the detenue was enlarged on bail on 25.10.2023 and immediately on the next day, i.e. on 26.10.2023, the impugned order of detention came to be passed. Though the lesser drastic remedy of cancellation of bail was available, the same has not been resorted to and straightaway the order of detention came to be passed.

7. Subjective satisfaction would stand vitiated, as is held in the recent decision of the Hon'ble Supreme 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."*

8. In view of above, we are inclined to allow this petition, because simplicitor registration of an FIR 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 **26.10.2023** 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. Rule is made absolute accordingly. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

PRAVIN KARUNAN