IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20486 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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VIJAY MAHESHBHAI DANTANI THROUGH HIS FRIEND HANSABEN VIJAYBHAI PATNI

Versus

COMMISIONER OF POLICE & ORS.

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Appearance:
MR MOHDDANISH M BAREJIA(10612) for the Petitioner(s) No. 1
DS AFF.NOT FILED (R) for the Respondent(s) No. 1,3
MR. YUVRAJ BRAHMBHATT, AGP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE
and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 16/04/2024

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) This H*onourable Court may be pleased to issue a writ of Habeas Corpus or writ of certiorari of any other appropriate writ, order and/or directions quashing and setting aside the detention order dated 10/10/2023 passed by the Respondent No. 1 (Ann.:A to this petition) in PCB/PASA/DTN/560/2023 and further be pleased to direct the respondents to release the petitioner detenu from the detention forthwith;
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> *(B) xxx*
>
> *(C) xxx"*

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

3. Essentially challenge is made to the order of detention dated 10-10-2023, where the petitioner has been detained as 'Dangerous person' on the grounds of three F.I.R. registered against him with Ahmedabad Railway Police Station by the Detaining Authority namely the Police Commissioner, Ahmedabad City.

3.1 Learned advocate for the petitioner has challenged the order of

detention on the ground that incident are pertaining to theft of mobile and therefore, detention is not justified, as it does not affect the public order.

3.2 Learned advocate for the petitioner has submitted that there is no evidence directly connecting the petitioner. Despite this, on the basis of certain statement, the petitioner has been now arraigned as an accused and the Court of competent jurisdiction has enlarged the petitioner on regular bail, still the Detaining Authority has not resorted to lessor drastic remedy available and has straightway passed the order of detention.

3.3 Learned advocate for the petitioner has submitted that the petitioner in connection with the last offence registered at Ahmedabad Railway Police Station, was enlarged on 09-10-2023 and thereafter, immediately on 10-10-2023 i.e. on the very next day, the petitioner was detained.

3.4 Learned advocate for the petitioner has submitted that in the interregnum period, there was no sufficient time available with the Detaining Authority to scrutinize the documents along with the proposal for detention and arrived at subjective satisfaction and therefore, the Detaining Authority has resorted to mechanical exercise of powers.

4. As against this, learned AGP for the respondent State has objected to the petition on the ground that the petitioner has been consistently indulging in committing offence and therefore, three offences have been registered in quick succession against the petitioner at Ahmedabad

Railway Police Station and as the offences in which the petitioner is involved covered under Chapter-XVI and XVII of the IPC, ingredients of 'Dangerous Person' are clearly attracted.

5. Lastly, learned Advocate for the petitioner in rejoinder has argued that the petitioner has been deprived of his legitimate right to make representation against his detention, as the documents, which are supplied along with the grounds of detention, are highly illegible.

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 10.10.2023 by the Detaining Authority namely Police Commissioner, Ahmedabad City. The Detaining Authority has relied upon three offences registered at Ahmedabad Railway Police Station between 22-09-2023 to 04-10-2023, each of which are pertaining to commission of theft of mobile phones and details of such offences in tabular form are as under:

Sr. No.	Police Station, F.I.R. No., Date and Section	Date of arrest of accused	Date of bail granted to the accused
1.	Ahmedabad Railway Police Station, C.R. No.11994001230651/2023, Date: 22-09-2023, Section-379, 114 of I.P.C	30-09-2023	04-10-2023
2.	Ahmedabad Railway Police Station, C.R. No.11994001230682/2023, Date: 03-10-2023, Section-379, 114 of I.P.C	04-10-2023	04-10-2023
3.	Ahmedabad Railway Police Station, C.R. No.11994001230687/2023, Date: 04-10-2023, Section-379, 114 of I.P.C	07-10-2023	09-10-2023

6.1 Perusal of detail in the aforesaid table would indicate that the petitioner in connection with first offence was arrested on 30-09-2023 and was released on bail on 04-10-2023. Thereafter, immediately, the petitioner was arrested on 04-10-2023 in connection with second offence, which was registered on 03-10-2023 and the petitioner was released immediately on 04-10-2023. Thereafter, in connection with third offence, which was registered on 04-10-2023, he was arrested on 07-10-2023 and released on bail on 09-10-2023.

6.2 Aforesaid chronology would indicate that the bail application filed by the petitioner in each of the offences, was not opposed by the Sponsoring Authority nor there is any mention of the Detaining Authority resorting to lessor drastic remedy available of cancellation of bail and therefore, to that extend, the subjective satisfaction of the Detaining Authorities stand vitiated, as in the order of detention only mention is made that as the petitioner is enlarged on bail, will continue to indulge in such anti-social activities. The Apex Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors.** reported in **2023 (9) SCC 633**, the Apex 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."*

6.3 The Court has taken into consideration the submission made by learned Advocate for the petitioner with regard to depriving the petitioner from making representation against his detention and in this connection, the Court has perused the documents supplied along with the ground of detention particularly on Page-19, 25, 29, 49, 53 and 55, all

of which are illegible documents and therefore, depriving the petitioner of his legitimate right. 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.*
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> *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.*
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> *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."

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 10-10-2023** 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