IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21139 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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RONAK ASHWINBHAI MAKWANA THROUGH HIS WIFE SANGITA RONAKBHAI MAKWANA

Versus

COMMISSIONER OF POLICE & ORS.

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Appearance:
MR VIRAL J VYAS(6233) for the Petitioner(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 2
MR RH RAVAL 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 : 06/05/2024

ORAL JUDGMENT

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

1. By way of this petition, the petitioner-detenue has prayed to quash and set aside the order of detention dated 02.11.2023 passed by the Commissioner of Police, Ahmedabad City in exercise of powers conferred under sub-section (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') and to set him at liberty forthwith.

2. Learned advocate has submitted that the petitioner has been detained on the ground that he is involved in two different offences under the Gujarat Prohibition Act. In connection with both the offences, the petitioner has been enlarged on regular bail by the competent Court. It is submitted that at the most the alleged illegal activities of the petitioner would cause disturbance to the law and order situation and under no circumstances, it could be said that the activities of the petitioner would lead to breach of "public order".

2.1 Learned advocate further submitted that instead of passing the order of detention, the sponsoring authority had the opportunity to avail the lesser drastic remedy of

cancellation of bail. In connection with the second offence, the petitioner was released on bail on 01.11.2023 and if the detaining authority was of the opinion that the alleged illegal activities of the petitioner were such that it would cause a breach to "public order", then the authority could have availed the lesser drastic remedy of cancellation of bail but, instead, on the very next day, i.e. on 02.11.2023, the order of detention came to be passed. Thus, the subjective satisfaction of the detaining authority stood vitiated.

3. Learned AGP strongly objected to the grant of petition and submitted that the alleged illegal activity of the petitioner-detenue would lead to disturbance of public order as both the offences have been committed in broad day light in busy public place.

4. Having heard the learned counsel for the parties and having gone through the grounds of detention, in the opinion of this Court, the detaining authority has failed to substantiate that the alleged boot-legging activities of the detenue adversely affect or is likely to affect the maintenance of "public order". Merely because two cases under the Prohibition Act have been registered against the detenue, that by itself, does not have any bearing on the maintenance of "public order".

5. In this connection, a reference to the decision of the Hon'ble Supreme Court in ***Pushker Mukherjee v/s. State of West Bengal*** [AIR 1970 SC 852] is apposite, wherein the distinction between "law and order" and "public order" has been discussed. The Hon'ble Supreme Court has 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. Further, 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 second FIR, the detenue was released from jail on 01.11.2023 and immediately on the next day, i.e. on 02.11.2023, 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. Hence, the impugned order of detention stands vitiated.

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 FIRs 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, this petition succeeds and is hereby allowed. The order of detention dated **02.11.2023** passed by the respondent authority is hereby ordered to be quashed and set aside and the detenue is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute. Direct service is permitted.

(A.Y. KOGJE, J)

(SAMIR J. DAVE, J)

PRAVIN KARUNAN