

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 21134 of 2023**

FOR APPROVAL AND SIGNATURE:

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

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

AADARSH RAMSWARUP PANCHAL

Versus

STATE OF GUJARAT

Appearance:

O I PATHAN(7684) for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the

Respondent(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1,2

MR YUVRAJ BRAHMBHATT, AGP for the Respondent(s) No. 3

CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 06/02/2024

ORAL JUDGMENT

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

1. This petition under Article 226 of Constitution is filed for following reliefs:-

“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 12/09/2023 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;

D. YOUR LORDSHIPS be pleased to pass such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted.”

2. Essentially, the challenge is made to the order of detention as a dangerous person passed by the Police Commissioner, City Vadodara on 12.09.2023 and detained on the very same day.

3. Learned advocate for the petitioner submits that the nature of offence in which the petitioner has been arraigned as an accused is not of such a nature which

shall amount to disturbance in public order. It is submitted that the incident concerned are sporadic incident of vehicle theft.

4. Learned advocate submitted that the petitioner has not been named as an accused but later on during the course of investigation he has been arraigned as an accused on the basis of recovery punchnama otherwise there is no evidence connecting the petitioner with the offence of theft.

5. Learned advocate submitted that the petitioner has been enlarged on regular bail by the Court of appropriate jurisdiction and the detaining authority or the sponsoring authority have not resorted to the proceeding of cancellation of bail which is a lesser drastic remedy to the passing of order of detention.

6. Learned advocate submitted that the petitioner cannot be treated as dangerous person particularly when there is no statement of the secret witnesses recorded to pointed out that the activity of the petitioner has disturbed the even tempo of life.

7. As against this, learned AGP has objected to the grant of petition by submitting that the two offences registered against the petitioner are falling within chapter-16 and 17 of IPC, and therefore, are covered under the definition of the dangerous person as contemplated in provisions of PASA.

8. Heard learned advocates for the parties and perused the documents on record. The petitioner is detained as a dangerous person by impugned order of detention dated 12.09.2023. The grounds of detention would indicate that the detaining authority has relied upon two IPC offences of vehicle theft registered with Panigate Police Station and Karelibaug Police Station respectively.

8.1 The details of such offences are in tabular form as under:-

Sr. No .	Police Station, F.I.R. No., and Section	Date of incident and date of bail	Date of arrest and time	Details of Muddamal	Recover Muddamal
1	Panigate Police Station, Part-A-11196017230700/2023, section-379 of IPC	02/09/2023 , 3.45 p.m., 14/07/2023 ,9.10 p.m.	29/08/2023 , 3.45 p.m., bail granted on 30/08/2023	Motorcycle -1, Rs.35,000/-	Motorcycle -1, Rs.35,000/-
2	Karelibaug Police Station, Part-A-11196027230407/2023, section 379 of IPC	19/07/2023 ,10.00 to 12.00, 29/08/2023 , 4.45	30/08/2023 , 8.15 p.m., bail granted 31/08/2023	Activa-1, Rs.20,000/-	Activa-1, Rs.20,000/-

9. The Court has taken into consideration the submission of learned advocate that the petitioner has been enlarged by the Court of competent Jurisdiction and the detaining authority has not considered the lesser drastic remedy available for cancellation of bail the only justification given by the detaining authority is the process for resorting to cancellation of bail would consume more time, and therefore, has proceeded to detain the petitioner.

9.1 It is pertinent to observe that in connection with the first offence at Panigate reported on 14.07.2023 in connection with the incident which took place on 02.06.2023, the petitioner came to be arrested on 29.08.2023 and immediately released on the next day i.e. on 30.08.2023 whereas in the second FIR which was registered on 29.08.2023 for an incident which takes place on 16.07.2023, the petitioner was arrested on 30.08.2023 and released on bail on 31.08.2023. The aforesaid chronology would clearly indicate that the detaining authority has not applied its mind to the fact of the petitioner forthwith being released on bail by the Court of competent Jurisdiction as well as the fact that the petitioner has been in quick succession arraigned as an accused in two offences the moment he has been released

on regular bail in the earlier offence.

10. The Apex Court in the case of **Shaik Nazeen v/s. State of Telanga and Ors.** rendered in **Criminal Appeal No.908 of 2022 (@ SLP (Crl.) No.4260 of 2022** dated 22.06.2022, the Apex Court has made following observations in para 17 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.”

11. The Court is of the view that in such a case it was an option available to the detaining authority to resort to the cancellation of bail where even without resorting to such procedure the detaining authority has given a finding that the cancellation of bail would consume more time. It is pertinent to observe here that the sponsoring authority had not objected to the grant of bail in connection with the first offence when on the very next day, the petitioner was arrested in the second offence and immediately released, and therefore, the subjective satisfaction in connection of resorting to lesser drastic remedy is not

satisfied.

12. The Court has also considered the nature of incident which have been reported to be the offences and these are the two sporadic incident which had taken place of theft of two various avenues, and therefore, it would not amount to disturbance of public order by disturbing the even tempo of life of the vicinity.

13. The Court has also considered the nature of offence alleged against the petitioner and considered the decision of the Apex Court in case of ***Pushker Mukherjee v/s. State of West Bengal*** [AIR 1970 SC 852] with regard to the damage to the public order attracting the provisions for detaining. The Apex Court in case of ***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.”

14. In the result, this Special Civil Application is allowed. The impugned order of detention dated **12-09-2023** passed by the respondent 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)