IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21330 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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KAMLESH @LALU S/O PRAMOD PARMAR THROUGH MINA PRAMOD PARMAR

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MS KRUPA K BELADIYA(13979) 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 RH RAVAL AGP for the Respondent(s) No. 3

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

Date : 01/05/2024

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 21.10.2023 passed by the Commissioner of Police, Surat 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 registered with Limbayat Police Station. It is submitted that in connection with the first offence, the petitioner was arrested on 12.08.2023 and was released from jail on bail on 26.08.2023, whereas, in the second offence, the petitioner was arrested on 16.10.2023 and was released from jail on bail on 20.10.2023. It is submitted that at the most, the activities of the petitioner would cause disturbance to the law and order situation. Under no circumstances, it could be said that the activities of the petitioner would cause breach of public order.

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

connection with the second offence, the petitioner came to be released from jail on 20.10.2023 and immediately on the next day, i.e. on 21.10.2023, the order of detention came to be passed. Thus, the subjective satisfaction of the detaining authority would stand vitiated.

3. Section 3 of the P.A.S.A. Act speaks about the power to make orders for detaining certain persons. It reads as under:

> *"Sec.3 - Power to make orders detaining certain persons:*
>
> *(1) The State Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*
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> *(2) If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate or the Commissioner of Police, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.*
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> *(3) When any order is made under this section by an authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, has a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the*

meantime, it has been approved by the State Government.

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order.

Explanation:- For the purpose of this sub-section, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in this sub-section directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health."

4. In this connection, it is required to be referred 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 laid down. 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.”

5. 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 anti-social activities of the detenue adversely affect or is likely to affect the maintenance of “public order”. Merely because two cases of theft have been registered against the detenue, that by itself, does not have any bearing on the maintenance of “public order”.

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

second FIR, the detenue was released from jail on 20.10.2023 and immediately on the next day, i.e. on 21.10.2023, 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 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 **21.10.2023** 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