IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7223 of 2026

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RABARI VIPUL @VALAN RAGHUBHAI BIJALBHAI THRO MANUBHAI RAGHUBHAI DESAI

Versus

DISTRICT MAGISTRATE & ORS.

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Appearance:
GAURAV VYAS(9855) for the Applicant(s) No. 1
MR. MEET THAKKAR APP for the Respondent(s) No. 2
RULE NOT RECD BACK for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 3

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CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**
and
HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 19/06/2026

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE GITA GOPI)

1. The petitioner herein came to be preventively detained vide the detention order dated 14.05.2026 passed by the District Magistrate, Mehsana, as a “dangerous person” as defined under Section 2(c) of the Gujarat Prevention of Anti-social Activities Act, 1985 (herein after referred as ‘the Act of 1985).

2. By way of this petition, the petitioner has challenged

the legality and validity of the aforesaid order.

3. This Court has heard learned advocate Mr. Gaurav Vyas and Mr. Meet Thakkar, learned Additional Public Prosecutor for the respective parties.

4. Learned advocate for the detenue submits that the grounds of detention has no nexus to the “public order”, but is a purely a matter of law and order, as registration of the offence cannot be said to have either affected adversely or likely to affect adverse the maintenance of public order as contemplated under the explanation sub-section (4) of Section 3 of the Act, 1985 and therefore, where the offences alleged to have been committed by the detunue have no bearing on the question of maintenance of public order and his activities could be said to be a prejudicial only to the maintenance of law and order and not prejudicial to the maintenance of public order.

5. On the other hand, learned APP opposing the application contended that, the detenue is habitual offender and his activities affected the society at large.

In such set of circumstances, the Detaining Authority, considering the antecedents and past activities of the detenue, has passed the impugned order with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Surat.

6. Having considered the facts as well as the submissions made by the respective parties, the issue arise as to whether the order of detention passed by the Detaining Authority in exercise of his powers under the provisions of the Act of 1985 is sustainable in law?

7. The order impugned was executed upon the petitioner and presently he is in Jail. In the grounds of detention, a reference of three criminal cases i.e. (i) for the offence under Sections 308(4), 351 and 61(2) with Mehsana Police Station, (ii) for the offence under Sections 115(2), 352, 351(3), 54 and 135 with Mehsana Police Station, (iii) for the offence under Sections 351(2) and 54 with Mehsana Police Station registered against the petitioner under the of Bhartiya Nyaya Sanhita, was

made and further it is alleged that, the activities of the detenue as a “dangerous person” affects adversely or are likely to affect adversely the maintenance of public order as explained under Section 3 of the Act of 1985.

8. After careful consideration of the material, we are of the considered view that on the basis of three criminal cases, the authority has wrongly arrived at the subjective satisfaction that the activities of the detenue could be termed to be acting in a manner ‘prejudicial to the maintenance of public order’. In our opinion, the said offences do not have any bearing on the maintenance of public order.

9. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Supreme Court in the case of ***Dr. Ram Manohar Lohia v. State of Bihar and Others, (1966) 1 SCR 709***. In this judgment, His Lordship Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads

thus:

> *"....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.*
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> *It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the*

smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State...."

9.1 The concept of `public order' and `law and order' has been dealt with in the case of ***Pushkar Mukherjee & Others v. The State of West Bengal, AIR 1970 SC 852***. In this case, the Supreme Court had relied on the important work of Dr. Allen on `Legal Duties' and spelled out the distinction between `public' and `private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished `public' and `private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction

along these lines, but differences naturally arise in the application of any such test.

9.2 The Supreme Court in the case of ***Babul Mitra alias Anil Mitra v. State of West Bengal & Others, (1973) 1 SCC 393*** had an occasion to deal with the question of "public order" and "law and order". The Supreme Court observed that the true distinction between the areas of "law and order" and "public Order" is one of degree and extent of the reach of the act in question upon society. The court pointed out that the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

9.3 In ***Commissioner of Police & Others, v. C. Anita (Smt.), (2004) 7 SCC 467***, the Supreme Court again examined the issue of "public order" and "law and order" and observed thus:

> *"7. ....The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such*

> *contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:*
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> > *"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"*
> > *This question has to be faced in every case on its facts."*

10. For the reasons recorded, we are of the considered opinion that, the material on record are not sufficient for holding that the alleged activities of the detenue have either affected adversely or likely to affect adversely the maintenance of public order and therefore, the subjective satisfaction arrived at by the

detaining authority cannot be said to be legal, valid and in accordance with law.

11. Accordingly, this petition stands allowed. The order impugned dated 14.05.2026 passed by the respondent authority is hereby quashed. We direct the detenue to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service permitted.

(GITA GOPI,J)

(L. S. PIRZADA, J)

DIKSHA

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: DIKSHA HARISH GUSAIN(HC02363), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 19/06/2026 16:20:27