IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7291 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

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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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SOMABHAI MOTIBHAI VANIYA
Versus
DISTRICT MAGISTRATE

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Appearance:
MR V B MALIK(5071) for the Petitioner(s) No. 1
MR BHARAT VYAS, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 2
RULE SERVED(64) for the Respondent(s) No. 1,3

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
Date : 28/08/2020
ORAL JUDGMENT

1. Heard learned advocates appearing for the respective parties.

2. The present petition is directed against order of detention dated 11.5.2020 passed by the respondent No.1 – detaining authority in exercise of powers conferred under section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the “Act of 1985”) by detaining the petitioner – detenue as defined under section 2(c) of the Act of 1985.

3. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside on the ground of registration of the solitary offence being First Information Report being C.R.No.11211015200293 of 2020 registered with Dhrangadhra City Police Station under Sections 332, 343, 186, 188, 504, 114 of the Indian Penal Code, by itself cannot bring the case of the detenue within the purview of definition under section 2(c) of the Act of 1985. Further, learned advocate for the detenue submits that illegal activity likely to be carried out or alleged to have been carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most, it can be said to be breach of law and order. Further, except statement of witnesses, registration of above FIR and Panchnama drawn in pursuance of the investigation, no other relevant and cogent material is on record connecting alleged anti-social activity of the detenue with breach of public order. Learned advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detenue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detenue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. Learned Assistant Government Pleader for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detenue indicate that detenue is in habit of indulging into the activity as defined under section 2(c) of the Act of 1985 and considering the facts of the case, the detaining authority has rightly passed the order of detention and detention order deserves to be upheld by this court.

5. Having heard learned advocates for the parties and considering the facts and circumstances of the case, it appears that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law, inasmuch as the offences alleged in the First Information Report cannot have any bearing on the public order as required under the and other relevant penal laws are sufficient enough to take care of the situation. The allegations levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue within the meaning of section 2(c) of the Act of 1985. Unless and until the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(c) of the Act of 1985. Except general statements, there is no material on record which shows that the detenue is acting in such a manner, which is dangerous to the public order. In this connection, it will be fruitful to refer 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 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."

6. The gist of the First Information Report reflects that the allegation made is that the petitioner was not wearing the mask and when stopped by the police personnel, got furious and entered into altercation with the police personnel performing their duties. Considering the definition of "dangerous person" as defined in section 2(c) of the Act of 1985, it appears that there is no mention of provisions of section 51(a) of the Disaster Management Act, 2005 and section 3 of the Epidemic Disease Act. It is well settled proposition of law that "dangerous person" defined under section 2(c) of the Act of 1985 means a person who either by himself or as a member of the leader of gang habitually commits or attempt to commit or abets the commission of any of the offences punishable under Chapter XVI or XVII of the Indian Penal Code or any other offences punishable under Chapter V of the Arms Act, 1959. Pertinently, there should be repeated or continuous act amounting to the offence referred to in the definition. In the present case, a solitary offence is registered against the petitioner and the detaining authority has failed to consider the said aspect.

7. In view of above, I am inclined to allow this petition inasmuch as, simpliciter registration of First Information Report by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act. 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 No.MJC-3/PAKE/17/2020 dated 11.5.2020 passed by the respondent No.1 – detaining authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith if not required in any other case.

8. Rule is made absolute accordingly. Registry to communicate this order to the petitioner through concerned jail authority by email or fax. Direct service permitted through e-mail is permitted.

(SANGEETA K. VISHEN,J)

BINOY/RAVI P. PATEL