

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION No. 3611 of 2012**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE ANANT S. DAVE**

=====

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, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
?

=====

**AKRAM SAFIBHAI QURESHI THROUGH BROTHER SHABBIR S QURESHI -  
Petitioner(s)**

**Versus**

**STATE OF GUJARAT THROUGH SECRETARY & 2 - Respondent(s)**

=====

**Appearance :**

MR SOEB R BHOHARIA for Petitioner(s) : 1, VALIMOHAMMED PATHAN for  
Petitioner(s) : 1,

MR RASHESH RINDANI ASST GOVERNMENT PLEADER for Respondent(s) : 1, 3,  
RULE SERVED BY DS for Respondent(s) : 1 - 2.

=====

**CORAM : HONOURABLE MR.JUSTICE ANANT S. DAVE**

**Date : 29/06/2012**

ORAL JUDGMENT

1. This petition is directed against the order of detention dated 11.01.2012 passed by respondent No.2, in exercise of powers conferred under Section 3(1) of the Gujarat prevention of Anti Social Activities Act, 1985 (in short "the Act") by detaining the detainee as a "cruel person" as defined under Section 2(bbb) of the Act.
2. Learned advocate for the detainee submits that the registered case under the prevention of Cruelty to Animals Act, 1960, would not indicate anything to

support disturbance to public order nor have the activities of the detainee affected adversely the maintenance of public order and, therefore, the order of detention passed by the detaining authority cannot be sustained in law and is required to be quashed and set aside.

3. Learned AGP has opposed the petition and supported the order of detention in letter and spirit.
4. Having heard the learned counsel for the parties, on perusal of record, considering the definition of 'cruel person' "*means a person who either by himself or as member or leader of a gang habitually commits or attempts to commit, abets the commission of an offence punishable under Section 8 of the Bombay Animal Preservation Act, 1954*" contained in Section 2(bbb) of the PASA Act and the law laid down by the Apex Court in the case of ***Gopalanachari Vs. State of Kerala***, reported in ***AIR 1981 SC 674***, where the Apex Court considered and reiterated the law on personal liberty vis-a-vis rule of law and procedure contemplated in Article 21 of the Constitution of India which means fair and not formal procedure and Article 22 which specifically spells out the procedural safeguards for preventive and punitive detentions and a law providing for such detention should conform to Article 22 of the Constitution of India, while referring to the decisions of the Apex Court in the case of Maneka Gandhi reported in [1978]1 SCC 248 and in the case of Hoskot reported in (1978)3 SCC 544, and as held by the learned Single Judge of this Court vide oral judgment dated 21.2.2005, in Special Civil Application No.15105 of 2004 [Ilyas Mohammad hi Vs. Commissioner of Police], and keeping in mind the object of detention law being prevention and not punishment, this Court is of the opinion that the activities of the detainee cannot be said to be adversely affecting the maintenance of public order and at the most fall under the maintenance of "law and order". Hence, the subjective satisfaction arrived at by the detaining authority is vitiated.
5. In the result, the petition is allowed. The impugned order of detention dated 11.01.2012 passed by respondent No.2 is hereby quashed and set aside. The detainee is ordered to be set at liberty forthwith if not required in any other case.
6. Rule is made absolute accordingly. Direct service is permitted.

[ANANT S. DAVE, J.]

..mitesh..