

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8973 of 2012
For Approval and Signature:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**
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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, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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PRAVINBHAI SHIVABHAI VAGHELA - Petitioner
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :

MS JAYSHREE C BHATT for Petitioner
MR RASHESH RINDANI AGP for Respondent: 1,
RULE SERVED BY DS for Respondents : 1 - 2.
None for Respondent : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**Date : 31/07/2012****ORAL JUDGMENT**

1. Heard learned counsel for the parties.
2. This petition is directed against the order of detention dated 18.04.2012 passed by the authority functioning under respondent no. 1 i.e

Police Commissioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the Act") by detaining the detinue as a "dangerous person" as defined under Section 2(c) of the Act.

3. Learned counsel for the detinue submits that order of detention impugned in this petition deserves to be quashed and set aside and the ground that registration of five offences by itself cannot bring the case of the detinue within the purview of definition under Section 2(c) of the Act. Further, learned counsel for the detinue submits that illegal activity carried out as alleged cannot have any nexus or bearing with maintenance of public order and at the most it can be said to be breach of law and order. Further, except statements of witnesses and registration of FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detinue with breach of public order.

4. Learned counsel for the detinue, placing reliance on the decisions reported in the cases of (i) **Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat** reported in 2000(3) GLR 2696; (ii) **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat** reported in 2000(1) GLH 393; and (iii) **Mustakmiya Jabbarmiya Shaikh**

v. M.M.Mehta, reported in (1995)3 SCC 237, submitted that the case on hand is squarely covered by the ratio laid down in the aforesaid decisions. Learned counsel for the detinue further submits that it is not possible to hold in the facts of the present case that the activities of the detinue with reference to the criminal cases had affected even tempo of the society, posing a threat to the very existence of the normal and routine life of the people at large or that on the basis of the criminal cases, the detinue 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.

5. Learned AGP for the respondent-State supported the detention order passed by the authority and submitted that the detinue is a dangerous person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detinue itself indicate that the detinue is in habit of indulging into activities as defined under Section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and the detention order deserves to be upheld by this Court.
6. Having heard learned counsel 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 FIRs cannot have any bearing on the public order since the law of the land i.e. Indian Penal Code and other relevant penal laws are sufficient enough to take care of the situation and that the allegations as have been levelled against the detenue cannot be said to be germane for the purpose of bringing the detenue as a dangerous person within the meaning of Section 2(c) of the Act and unless and until the material is there to make out a case that the person concerned has become a threat and a menace to the society so as to disturb the whole tempo of the society and that the whole social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a dangerous person within the meaning of Section 2(c) of the Act. Except general statement, there is no material on record which shows that the detenue is acting in such a manner which is dangerous to the public order. There are number of decisions of this Court as well as the Hon'ble Apex Court on this point. In view of the ratio laid down by the Hon'ble Supreme Court in the cases of (i) Ranubhai Bhikhabhai Bharwad (Vekaria)(supra); (ii) Ashokbhai Jivraj @Jivabhai Solanki (supra); and (iii) Mustakmiya Jabbarmiya Shaikh (supra), the Court is of the opinion that the activities

of the detainee cannot be said to be dangerous to the maintenance of public order and at the most fall under the maintenance of "law and order".

7. The petitioner has taken out this petition inter-alia challenging the order dated 18.4.2012, whereunder, the petitioner is detained on account of his involvement in five cases mentioned in the reasons at Page-11. The narration of five cases indicate that the offences are registered from 20.12.2011 to 12.2.2012 and they are registered at one police station called Naranpura police station and it is in respect of Section 392 of the IPC read with Section 114 of the IPC and the allegation is in respect of chain snatching using motorcycle. The fact remains to be noted that on account fourth offences, the petitioner was arrested on 16.2.2012 in respect of offence registered on 20.12.2011. Thereafter it appears that other offences were detected, whereunder the Investing Officer has found some material, which pointed out its involvement in present petitioner and hence, the transfer arrest was effected as submitted by learned AGP in respect of other offences. The fact remains to be noted that first arrest was made on 16.2.2012, wherein bail was granted on 9.3.2012 and the second arrest was transfer arrest as submitted learned AGP, which was effected on 16.2.2012, wehreunder, the bail order is made but of no

avail as the arrest dated 16.2.2012 in respect of I.C.R. No. 06 of 12 is not resulted into any bail order. The over all facts and circumstances and in view of the fact that respondents have not filed any affidavit and the fact that there is no material on record as on date, leading to one and only conclusion that the petitioner is a dangerous person, this court is of the view that the detention order cannot be sustained as it would amount to perpetuating the custody without conviction.

8. In view of the above, I am 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 can have recourse under the Indian Penal Code and no other relevant or cogent material exists for invoking powers under Section 3(2) of the Act.

9. In the result, the petition is allowed. The order of detention dated 18.04.2012 passed by authority functioning under respondent No. 1 i.e Police Commissioner is quashed and set aside. The detenu, is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute accordingly. Direct service permitted.

(S.R.BRAHMBHATT, J.)

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