IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6882 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G.SHAH

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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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GOVIND @ GOVO RAMESHBHAI VAGHELA....Petitioner(s)

Versus

COMMISSIONER OF POLICE & 2....Respondent(s)

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Appearance:

MR BHAVIN S RAIYANI, ADVOCATE for the Petitioner(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1 - 2

MS ASMITA PATEL, AGP for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE S.G.SHAH**

Date : 19/05/2014

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. This petition is directed against the order of detention dated 11.03.2014 passed by respondent No.1, 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 detenu as a dangerous person as defined under section 2(c) of the Act.

3. Learned advocate for the detenu submits that the order of detention impugned in this petition deserves to be quashed and set aside and the ground that the registration of one offence by itself cannot bring the case of the detenu within the purview of definition of dangerous person under Section 2(c) of the Act. Learned counsel for the detenu further submits that the illegal activity carried out as alleged, cannot have any nexus or bearing with the maintenance of the 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 FIR, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detenu with breach of the public order.

4. Learned counsel for the detenu, 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 detenu further submits that it is not possible to

hold in the facts of the present case that the activities of the detenu with reference to the criminal case/s 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 case/s, the detenu had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by the rule of law by disturbing the public order.

5. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that the detenu is a dangerous person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenu, indicating that the detenu 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 the 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 offence alleged in the FIR 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 detenu cannot be said to be germane for the purpose of bringing the detenu 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 detenu 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 detenu is acting in such a manner which is dangerous to the public order. In view of the ratio laid down by the Hon'ble Supreme Court in the cases of [i] Ranubhai Bhikhabhai Bharwad (supra), [ii] Ashokbhai Jivraj @ Jivabhai Solanki (supra) and [iii] Mustakmiya Jabbarmiya Shaikh (supra), the Court is of the opinion that the activities of the detenu 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. In view of the above, I am inclined to allow this petition because simplicitor registration of FIR by itself cannot have any nexus with the breach of maintenance of public order and the authority can take recourse under the Indian Penal Code and no other relevant or cogent material exists for invoking powers under Section 3(2) of the Act.

8. If we peruse the citations, it becomes clear that even the Hon'ble Supreme Court has considered that detention is not permitted even in the case of robbery and theft. The present is the case of sections 379 and 114 of the Indian Penal Code and Rule A.5, 6, 8, Sections 6, 6(B)(1)(2)(3) of the Gujarat Animal Husbandary (Amendment) Rules and Rule A.11EL of the Animal Cruelty Rules, Sections A.335, 336 of B.P.M.C. Act and Section 119 of the Gujarat Police Act. Therefore, the Court has no option but to allow the petition.

9. The petitioner has argued on merits on FIR, referring certain judgments. However, discussion of such facts, *prima facie* at this stage, is

not warranted since it may otherwise prejudice the trial.

10. It is generally seen that though some of the accused are repeatedly detained on different occasions for different offences, only because of nondisclosure of proper information and in all such detention orders, such orders are generally quashed and set aside by the Court. It is also seen that because of quashing of previous detention order, competent authority could not consider the grounds of detention under such order which is already quashed as a ground for detention for subsequent offences by the same detenue. However, when competent authorities are not abiding all other cited cases while passing the order of detention based upon solitary offence, it is surprising to note that at no point of time they challenged the observation of any Court that when previous order of detention has been quashed, it cannot be considered in subsequent detention. It goes without saying that if a particular detenu continuous to commit the similar offence repeatedly, and if he is required to be detained repeatedly then at least at some point of time, the competent authority shall compile all the information and shall consider it for fresh detention order as and when necessary and shall produce all such information before the Court so as to avoid the quashing of such detention order. If competent authority fails to take care of such exercise and when in impugned order of detention all such facts were not disclosed or considered for passing such order, the detention order is required to be dealt with as it is without considering the additional disclosure in affidavit-in-reply by the respondents.

11. In view of above facts and circumstances, it would be necessary to observe that the competent authority is not precluded to disclose all material facts while detaining the petitioner if so require for any offence that he might commit hereinafter. In other words, though impugned order

is quashed and set aside at present, it would not come in way of the competent authority for quoting such FIR and order of detention, thereby to treat petitioner as a habitual offender in case of commission of offence repeatedly.

12. However, since all such order are quashed on technical ground, the same shall not come in the way of the detaining authority to pass an appropriate order in future.

13. The petitioner has also produced the affidavit of original complainant, namely, Afzal Rafikbhai Langha, at Annexure-'D' confirming that now he has no grievance.

14. In the result, the petition is allowed. The order of detention dated 11.03.2014 passed by the respondent No.1 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.G.SHAH, J.)

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