IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8395 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.J.DESAI

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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, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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DAULATSINGH @ BHAGABHAI S/O POONAMBHAI DABHI....Petitioner(s)

Versus

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

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Appearance:
MS RATNA VORA, ADVOCATE for the Petitioner(s) No. 1
MS AMITA SHAH, AGP for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE A.J.DESAI**

Date : 30/09/2014

ORAL JUDGMENT

1. Heard learned advocate for the petitioner and learned AGP for respondent – State.

2. By way of the present petition, the petitioner – detenue has prayed to quash and set aside the order of detention dated

12.05.2014 passed by concerned authority in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the PASA Act') by detaining the detenue as a 'dangerous person' as defined under Section 2(c) of the Act.

3. The detenu came to be detained as “dangerous person” on his involvement in the offences being CR Nos. I – 553 of 2012 and I – 122 of 2014 registered before Odhav Police Station.

4. Learned advocate for the petitioner would submit that the allegations made against the detenu are not correct; that the material collected by the detaining authority and looking to the statement recorded by the detaining authority, it cannot be said that the alleged activities of the petitioner would fall within the purview of “dangerous person”. In the background of this case, he would further submit that the petitioner is not an habitual offender and cannot be detained under the provisions of PASA Act. By relying upon the decision in case of *Mustakmiya Jabbarmiya Shaikh V. M.M.Mehta, Commisioner of Police & Ors. reported in 1995(2) G.L.R.1268,* he would further submit that there is no question of breach of any public order, and therefore, the petitioner cannot be treated as 'dangerous person' under the provisions of PASA Act.

5. On the other hand, learned AGP, by relying upon the judgement and order dated 15.07.2014 passed in Special Civil Application No. 4002 of 2014 (Coram : Hon'ble Mr. Justice S.G.Shah), would submit that four offences have been registered against the present petitioner and the case of the petitioner is covered by the said decision. Learned APP would further submit that the detenue had preferred Letters Patent Appeal No. 905 of 2014 challenging the

decision of above referred Special Civil Application No. 4002 of 2014, which came to be dismissed by the Division Bench of this Court (Coram : Hon'ble Mr. Justice V.M.Sahai and Hon'ble Mr.Justice R.P.Dholaria) *vide* order dated 22.08.2014 passed in Letters Patent Appeal No. 905 of 2014, and therefore, the present petition be dismissed.

6. In reply to the argument advanced by learned AGP, learned advocate for the petitioner would submit that the decision of *Mustakmiya Jabbarmiya Shaikh (Supra)* was not brought to the notice of the learned Single Judge (Coram : Hon'ble Mr. Justice S.G.Shah) as well as before the Division Bench (Coram : Hon'ble Mr. Justice V.M.Sahai and Hon'ble Mr. Justice R.P.Dholaria), and therefore, the order of detention has not been quashed and set aside. By placing a copy of judgement and order dated 04.08.2014 passed in Special Civil Application No. 4844 of 2014 by the learned Single Judge (Coram : Hon'ble Mr. Justice S.G.Shah), learned advocate would further submit that the learned Single Judge, by relying upon different decisions of this Court as well as of the Apex Court including decision of *Mustakmiya Jabbarmiya Shaikh (Supra)*, has held that only on the ground of lodging FIR under the provision of the Arms Act, the authority would not entitle to detain the person under the provision of the Arms Act labelling him as a 'dangerous person'. By relying upon another subsequent decision of the Division Bench of this Court (Coram : Hon'ble Mr. Justice V.M.Sahai and Hon'ble Mr. Justice R.P.Dholaria) dated 27.08.2014 passed in Latters Patent Appeal No. 920 of 2014, learned advocate for the petitioner would further submit that the Division Bench has opined that only registering the offence under the provision of Arms Act or under the provisions of Chapter XVI or Chapter XVII of the IPC, no sufficient reason arisen to label the person as dangerous person,

and therefore, the detention order confirmed by the learned Single Judge came to be quashed and set aside.

7. The Apex Court has in case of *Mustakmiya Jabbarmiya Shaikh (Supra)* observed as under:

> *"**8.** The Act has defined "dangerous person" in clause (c) of Sec. 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. (1987), p. 499, 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn., p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalanchari v. State of Kerala, AIR 1981 SC 674 this Court had an occasion to deal with expressions like "bad habit", 'habitual', 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar, 1984 (3) SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together*

similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of Sec. 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec. 2(c) of the Act.

9. *Further, sub-sec. (1) of Sec. 3 of the Act confers power on the State Government and a District Magistrate or a Commissioner of Police under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order". The explanation attached to Sub-sec. (4) of Sec. 3 reproduced above in the foregoing para contemplates that "public order" shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in sub-sec. (4) directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sub-sec. (4) of Sec. 3 also provides that for the purpose of Sec. 3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order*

and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh v. State of W. B., 1970 (1) SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C. J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized

because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, 1989 Supp. (1) SCC 322 : [1989(1) GLR 563 (SC)], this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

8. I have heard learned advocate for the respective parties. Perused the impugned order of detention. I am of the opinion that learned advocate for the petitioner has rightly submitted that the decision of *Mustakmiya Jabbarmiya Shaikh (Supra)* was not brought to the notice of the learned Single judge as well as before the Division Bench. I have also considered that fact that the petitioner is found out with one weapon, however, he was named only on the statement of the co-accused that arms was supplied by the petitioner. I have also considered the decisions of *[i] Ranubhai Bhikhabhai Bharwad [Vekaria] v. State of Gujarat reported in 2000[3] GLR 2696, and [ii] Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat reported in 2000[1] GLH 393 [iii] District Collector, Ananthapur V/s. V. Laxmanan, reported in (2005) 3 SCC 663 [iv] Amanulla Khan Kudeatalla Khan Pathan V/s. State of Gujarat, reported in AIR 1999 SC 2197;*

9. Considering the observation made by the Apex Court as well as above fact, no case is made out and the activities of the present petitioner was not of a dangerous to public at large and I am of the opinion that the grounds for passing the said order, cannot be sustained and, therefore, it deserves to be quashed and set aside.

10. In the result, this Special Civil Application is allowed. Order of detention dated 12.05.2014 passed by respondent authority is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute. Direct service is permitted.

(A.J.DESAI, J.)

**Kazi...*