IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 19012 of 2015

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 or any order made thereunder ?	

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AZRUDDIN @ AZHAR ISMAILBHAI SHAIKH....Petitioner(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

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Appearance:

MR SALIM M SAIYED, ADVOCATE for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GP/PP for the Respondent(s) No. 1

MR MANAN MEHTA, ASST. GOVERNMENT PLEADER for the Respondent(s) No. 3

RULE SERVED BY DS for the Respondent(s) No. 1 - 2

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

Date : 30/11/2015

ORAL JUDGMENT

1. Heard learned counsel for the parties.

2. Learned advocate for the petitioner is requesting to amend the cause title by replacing respondent No.3. However, instead of replacing respondent No.3 – Police Inspector, Vejalpur Police Station, Vejalpur, Ahmedabad, proposed respondent No.3 – Superintendent of Jail, Jamnagar Jail, Jamnagar is permitted to be added as respondent No.4, considering the fact that petitioner is under detention in such jail.

3. This petition is directed against the order of detention dated 20/10/2015 passed by respondent no. 2, 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 detenue as a **"dangerous person"** as defined under section 2[c] of the Act.

4. Learned advocate for the detenue submits that the order of detention impugned in this petition deserves to be quashed and set aside and the ground that the registration of three offences by themselves cannot bring the case of the detenue within the purview of definition of "dangerous person" under Section 2[c] of the Act. Learned counsel for the detenue 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 FIRs, no other relevant or cogent material is available on record connecting the alleged anti-social activities of the detenue with breach of the public order.

5. Learned counsel for the detenue, 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 detenue further submits that it is not possible to hold in the facts of the present case that the activities of the detenue 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 detenue 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.

6. Learned AGP for the respondent – State supported the detention order passed by the authority and submitted that the detenue is a dangerous person and sufficient material and evidence was found during the course of investigation, which was also supplied to the detenue, indicating that the detenue 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.

7. 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 in as much 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. 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 detenue cannot be said to be dangerous to the maintenance of public order and at the most fall under the maintenance of "law and order". Further, there are serious allegations against the petitioner. On perusal of the jail record it seems that police has not taken proper care in investigating offences and petitioner was arrested only on presumption and therefore I to not see any reason to detain the petitioner by confirming the detention order. However, it is made clear that this order will not influence the trial in any manner.

8. In view of the above, I am inclined to allow this petition because simplicitor registration of FIRs by themselves 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.

9. 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 323, 394, 506(II), 294B, 427, 114 etc. of the Indian Penal Code, Section 135(I) of the Gujarat Police Act and Section 25(I) of the Arms Act. Moreover, the competent authority has assigned such a reason that since they are unable to take action under sections 107 and 110 of the Criminal Procedure Code [Cr. P.C.], they are detaining the detenue. Unfortunately and surprisingly the authority has disclosed in the impugned order that they do not believe in taking action under sections 107 and 110 of the Cr. P.C and instead of following such rule of law, they selected to pass an order of detention. Therefore, the Court has no option but to allow the petition.

10. The petitioner has argues on merits of FIRs, referring certain judgments. However, discussion of such facts, prima facie at this stage, is not warranted since it may otherwise prejudice to the trial.

11. However, since all such orders are quashed on technical ground, the same shall not come in the way of the Detaining Authority to pass an appropriate order in

future.

12. In the result, the petition is allowed. The order of detention dated 20/10/2015 passed by the respondent no. 2 is 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 accordingly. Direct service permitted.

(S.G.SHAH, J.)

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