IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12524 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

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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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RAHUL GOPALBHAI @ GOPIBHAI PATANI (GOTAKAVALA) THORUGH HIS MOTHER

Versus

POLICE COMMISSIONER AHMEDABAD CITY

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Appearance:

MR MAHENDRA U VORA(3034) for the Petitioner(s) No. 1

MR UTKARSH SHARMA, ASST. GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

Date : 30/12/2020

ORAL JUDGMENT

1. The petitioner is before this Court seeking to quash and set aside the order of detention being no. PCB/DTN/PASA/546/2020 dated 25.07.2020 passed by the detaining authority with the following prayers: -

> *"(A) Your Lordships will be pleased to issue a writ of Habeas Corpus or a writ of mandamus or any other appropriate writ, order or direction in the like nature quashing and setting aside the impugned order of detention dated 25.07.2020 at Annexure- "A" passed by the respondent no.1 and be further pleased to release the detenue forthwith;*
>
> *(B) That pending the hearing and final disposal of this petition, Your Lordships will be pleased to release the detenue on bail on such terms and conditions deemed just fit by this Hon'ble Court;*
>
> *(C) Any other appropriate relief deemed just, fit and proper may please be granted."*

2. The petitioner has challenged the action of the respondent authority which passed the order of detention under the Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as the 'PASA Act') on the ground that he has been falsely involved in certain offences and is detained by an order of detention. It is the say of the petitioner that it is a malafied exercise of powers on the part of respondent no.1 whereby the order of detention dated 25.07.2020 has been passed.

2.1. It is further the say of the petitioner that there is hardly any material to support the allegations which have been relied upon. He further submits that there are non-communication of grounds which affected the right of the detenue to make effective representation under Article 22(5) of the Constitution of India.

2.2. Moreover, it is urged that none of the materials is indicative of this being a case of affecting the public order, therefore, if the activities of the petitioner has caused the law and order situation and has not prejudiced the public order,

the Court needs to interfere. The petitioner further submits that the claim of privilege based on confidentiality and safety in relation to the witnesses is also questionable.

3. This Court (Coram: Mr. S.H.Vora, J.) has issued notice on 15.10.2020 and the matter has been placed before this Court for final hearing.

4. This Court has heard learned advocate Mr. M.U.Vora appearing for the petitioner and learned Assistant Government Pleader Mr. Utkarsh Sharma appearing for the respondent – State.

5. Learned advocate Mr. M.U.Vora appearing for the petitioner has fervently urged that the petitioner is very young who is termed as a 'Dangerous Person'. There are only two offences registered against him and in both of them, he has been granted regular bail by the Court and the said orders have not been challenged by the State. It is further his say that there is complete non-application of mind and therefore, the subjective satisfaction on the part of the detaining

authority is vitiated. Furthermore, the detenue's right is completely eclipsed as the confidentiality has been claimed in respect of the statements of the witnesses recorded by the detaining authority. Moreover, the statements being similar and stereotype, they do not inspire any confidence. He has urged that the ordinary law of the country is capable of looking after the interest of the society and hence, the right of the petitioner cannot be jeopardized by invocation of provisions of PASA.

6. Learned AGP Mr. Utkarsh Sharma appearing for and on behalf of the respondent – State has fervently resisted this on the ground that the man is termed as a dangerous person on account of his actions which are of such a nature which makes the locality very unsafe place to stay and hence, the public order is seriously jeopardized.It is further contended that the court may not interfere in the subjective satisfaction of the authority when the material placed before the court is capable of conveying that there is a possibility to arrive at such conclusion. It is the larger good of the society which needs to be kept in the view by the court as in every matter,

there are bound to be distinct facts which need to be regarded at the touchstone of law on the subject.

7. Upon hearing learned advocates on both the sides and on due examination of the material which has been placed on record, at the outset, the Court needs to look at the law on the subject and instead of independently considering the law, it would be profitable to reproduce the decision of this Court rendered in case of **Shambhunath Rajbahadur Ramapati Gautam vs. State of Gujarat [Special Civil Application No. 9514 of 2020] on 10.12.2020**:

> *"7. Having, thus, heard both the sides and also on examining the material on record, it can be noticed that by virtue of the order dated 26.07.2020, passed by respondent No.2, the petitioner has been detained under the PASA Act. The challenge is made on various grounds, principal being that action of the petitioner is, in no manner, causing prejudice to the public peace nor is it causing the disturbance of the public order. On the ground that there is violation of Articles 21 and 22 of the Constitution of India and the settled law of the country, this challenge is made.*
>
> *7.1 At the outset, the definition of the dangerous persons is required to be considered from the provisions of the PASA Act, which is provided under Section 2(C) of the PASA Act. A person, who either by himself or as a*

member or leader of a gang; during the period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under the IPC, is termed as a dangerous person under the Act, as provided under this Act or under any other Act. Thus, what is required of the person, who is termed as the dangerous person, is of his commission of offences, as provided in this definition and his habit of committing such offences.

7.2 Sub-Section (1) of Section 3 of the Act, which empowers the State Government that, if, it is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. Therefore, the same shall need to be regarded by this Court. Further, Sub-Section (4) of Section also shall need to be regarded by this Court, which provides, for the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order", when such a person is engaged in or is making preparation for engaging in any activities, whether, as a bootlegger or common gambling house or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. The explanation for the purpose of this sub-section provides 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 this sub-section directly or indirectly, is 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 fife, property or public health.

*7.3 In this background, the Court shall also need to regard the decision of the Apex Court in the case of '**AMANULLA KHAN KUDEATALLA KHAN VS. STATE OF GUJARAT**', AIR 1999 SC 2197, where, the Apex Court was considering as to who can be termed as the dangerous person or a habitual offender. In the matter before the Apex Court, the detaining authority on being satisfied from the activities of the detenu that he belongs to a notorious gang and the members of the gang hatched conspiracy to extort money from the people, by putting them under threat of fear of death, was satisfied that the detenu is a dangerous person within the meaning of Section 2[c] of the Act and the activities of the detenu and his gang members were such that for maintenance of public order it was necessary to detain the detenu and accordingly the order of detention against the detenu was passed. The Apex Court, on hearing both the sides, held that the subjective satisfaction arrived at by the respondent authority is just and thereby, it refused to interfere with the order of detention. The relevant observations read thus:*

"3. The detaining authority on being satisfied from the activities of the detenu that he belongs to a notorious gang and the members of the gang hatched conspiracy to extort money from the people who are engaged in building construction business in the city by putting the people under threat of fear of death, was satisfied that the detenu is a dangerous person within the meaning of Section 2[c] of the Act and the activities of the detenu and his gang members were such that for maintenance of public order it was necessary to detain the detenu and accordingly the order of detention against the detenu was passed. Immediately after the order of detention was passed, the detenu approached the Gujarat High Court as already stated inter alia on the ground that the single activity of the detenu for which CR No. 36/97 under Sections 120-B, 387 and 506(2) IPC had been

registered is not sufficient to hold him to be a dangerous person within the meaning of Section 2[c] of the Act and as such the order of detention is vitiated. By the impugned Judgment, the High Court came to the conclusion that the satisfaction of the detaining authority was not based solely on the incident culminating in registration of the criminal case under Sections 120-B, 387 and 506(2) of the Indian Penal Code but also the incidents that happened on 26.7.98 and 2.8.98 about which the two witnesses have stated before the detaining authority and therefore, the satisfaction of the detaining authority, holding the detenu to be a dangerous person cannot be said to be vitiated.

4. Mr. Anil Kumar Nauriya, the learned counsel appearing for the detenu in this court reiterated the same contention namely that a single incident in which the detenu is alleged to be involved and for which the criminal case had been registered will not be sufficient to hold the detenu to be a dangerous person under Section 2[c] of the Act inasmuch as the expression dangerous person has been defined to be a person who either by himself or as a member or leader of a gang, during a period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. In other words according to the learned counsel unless the activities of the detenu considered by the detaining authority indicate that he has either habitually committed or attempted to commit or abet the commission of offence, cannot be held to be a dangerous person under Section 2[c] of the Act. The expression habitually would obviously mean repeatedly or persistently. It supplies the threat of continuity of the activities and, therefore, as urged by the learned counsel for the petitioner an isolated act would not justify an inference of habitually commission of the

activity. In this view of the matter the question that requires adjudication is whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu. If the grounds of detention is examined from the aforesaid stand point, it is crystal clear that apart from the criminal case which had been registered against the detenu for having formed a gang and hatched a conspiracy to extort money from the innocent citizens by threatening them and keeping them under constant fear of death, the two witnesses examined by the detaining authority narrated the incident that happened on 26.7.98 and 2.8.98 in which the detenu was involved and on the first occasion a sum of Rs. 1 lac was demanded and when the person concerned refused, he was dragged and assaulted and on the second occasion a sum of Rs. 50 thousand was demanded and on refusal, the persons were dragged on the road and were beaten on the public road. It is not the grievance of the detenu that the statements of the aforesaid two witnesses had not been appended to the grounds of detention or had not been mentioned in the grounds of detention. In fact the grounds of detention clearly mention the aforesaid state of affairs and there is no bar for taking these incidents into consideration for the satisfaction of the detaining authority that whether the person is a dangerous person within the ambit of Section 2[c] of the Act. We, therefore, fail to appreciate the first contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a dangerous person is based upon the solitary incidence in respect of which a criminal case has already been registered. In our considered opinion the detaining authority has considered the three different incidents happened on three different dates and not a solitary incidence and, therefore, the test of repeatedness or continuity of the activity is fully satisfied and the satisfaction of the

detaining authority holding the detenu to be a dangerous person is not vitiated in any manner. The contention of the learned counsel for the petitioner therefore stands rejected.

5. Mr. Anil Kumar, the learned counsel then urged that even if the activities of the detenu were sufficient to hold him to be a dangerous person yet an order of detention can be passed under the Gujarat Act only with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. By virtue of provisions contained in Sub-section (4) of Section 3 of the Act a person shall be deemed to be acting in any manner prejudicial to the maintenance of public order when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Thus maintenance of public order is sine qua non for passing an order of detention under Section 3 of the Gujarat Act. But in the case in hand the alleged activities of the detenu are all in relation to violation of the normal criminal law and it has got no connection with the maintenance of public order and, therefore, the order of detention is vitiated. We are unable to appreciate this contention of the learned counsel for the detenu inasmuch as even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not. In Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commisioner of Police and Ors. 1995(3) SCC 237, it has been held by this court 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 breach of public order. Applying the ratio of the aforesaid decision to the facts of the present case we find that the activities of the detenu by trying to extort money from ordinary citizens by putting them to fear of death and on their refusal to part with the money to drag them and torture them on public road undoubtedly affected the even tempo of life of the society and, therefore such activities cannot be said to be a mere disturbance of law and order. In our considered opinion the activities of the detenu are such that the detaining authority was satisfied that such activities amount to disturbance of public order and to prevent such disturbance the order of detention was passed. We, therefore, do not find any substance in the second contention of the learned counsel for the detenu. Mr. Anil Kumar then urged that the Advisory Board having not indicated that the detenu is to be detained for more than three months, has failed to discharge its constitutional obligation and there has been an infringement of Article 22(5) of the Constitution and in support of the same reliance has been placed on the decision of this court in A.K. Gopalan vs. The State of Madras, 1950 SCR 88 and the decision of this Court in John Martin vs. The State of West Bengal, 1975(3) SCR 211. At the outset it may be stated that the detenu had not made any such grievance in the writ petition that had been filed in the Gujarat High Court. That apart, the opinion of the Advisory Board to the State Government, rejecting the representation of the detenu and expressing its opinion with regard to the existence of sufficient cause for the

detention of the detenu is not a part of the record and what is pressed into service by the learned counsel in support of his argument is the mere communication from the Section Officer of the Home Department dated 27th August, 1998, intimating the factum of the rejection of representation by the Advisory Board. Section 11 of the Act is the procedure for making reference to the Advisory Board and Section 12 provides the duties and obligation of the Advisory Board on the basis of materials placed before it. Under Sub-section (2) of Section 12 it is the requirement of law that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the detenu and this opinion of the Advisory Board has been furnished in the present case. We really fail to understand how a contention could be raised that the Advisory Board has failed to discharge its obligation and how the court would be entitled to examine the same without even the copy of the report of the Advisory Board being formed a part of the records of the present proceedings. In view of the counter affidavit filed in the present case that all the provisions have been duly complied with and in the absence of any material to support the arguments advanced by the learned counsel, we do not find any force in the contention raised alleging any infraction of provision of law in the opinion given by the Advisory Board and the said Board in rejecting the representation of the detenu. This contention therefore, is devoid of force."

*7.4 In case of '**SUBRAMANIAN VS. STATE OF TN & ANOTHER**', (2012) 4 SCC 699; the Apex Court was considering the as to when would be the public order can be said to be disturbed. It denotes the tempo of the community, the use of the weapons and the damage caused to the public and private property, threatening public tempo and creating panic amongst the people in a locality and this was held sufficient to disturb the public*

order. The relevant observations are as under:

“9) With regard to the first submission that no case is made out for preventive detention by invoking the provisions of T.N. Act 14 of 1982, though the ground case incident arose out of a land dispute between the detenu and the de facto complainant, however, the argument that it is only a law and order problem and that public order was not disturbed is contrary to the facts and equally untenable. As rightly pointed out by Mr. Guru Krishnakumar, the Detaining Authority, on consideration of materials placed has found that the accused caused damage to both public and private properties, threatened the public and also created a situation of panic among the public. In this regard, it is useful to refer the materials narrated in the grounds of detention which are as follows:

"On 18.07.2011, at about 10:00 hours, while Kaliyamoorthy was available in the STD booth, Kajamalai Kadaiveethi, Kajamalai, Tiruchirapalli city, the accused Kajamalai Viji @ Vijay armed with aruval, his associates Manikandan, Uthayan, Sathiya, Sivakumar armed with Kattas came there. The accused Kajamalai Viji @ Vijay abused Kaliyamoorthy in a filthy language, threatened to murder him with aruval by saying "Have you become such a big person to give complaints against me. You bastard, try giving a complaint, I will chop you down right here."

His associates threatened him with their respective kattas. Thereafter, the accused Kajamalai Viji @ Vijay caused damage to the glasses, chair and stool available in the shop. While Kaliyamoorthy questioned them, the accused Kajamalai Viji @ Vijay slapped him on the face. Kaliyamoorthy raised alarm for rescue. The general public came there and they were threatened by the accused Kajamalai Viji @ Vijay and his associates by

saying "if anyone turns up as witness, I will kill them." The nearby shop-keepers closed their shops out of fear. Auto drivers took their autos from the stand and left the place. The situation created panic among the public. On the complaint of Kaliyamoorthy, a case in K.K. Nagar P.S. Cr. No. 361/2011 u/s 147, 148, 447, 448, 427, 294(b), 323, 506(ii) IPC and 3 P.P.D. Act was registered."

10) From the above materials, the Detaining Authority was satisfied that the detenu is habitually committing crimes and also acting in a manner prejudicial to the maintenance of public order and as such he is a `goonda' as contemplated under Section 2(f) of the T.N. Act 14 of 1982. The order further shows that the Detaining Authority found that there is a compelling necessity to detain him in order to prevent him from indulging in such activities in future which are prejudicial to the maintenance of public order. After narrating the details of the ground case and after adverting to earlier instances commencing from the years 2008 and 2010, the Detaining Authority has concluded as under:-

"Hence, I am satisfied that the accused Kajamalai Viji @ Vijay is habitually committing crimes and also acting in a manner prejudicial to the maintenance of Public order and as such he is a Goonda as contemplated under Section 2(f) of the Tamil Nadu Act No. 14 of 1982. By committing the above described grave crime in a busy locality cum business area, he has created a feeling of insecurity in the minds of the people of the area in which the occurrence took place and thereby acted in a manner prejudicial to the maintenance of public order."

11) It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the

Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion."

*7.5 Reliance is also placed on the decision of this Court in Special Civil Application No. 6414 of 2020, Dated : 12.06.2020, where, the Court was considering the question of detaining authority having termed the petitioner as the dangerous person under Section 2(C) of the PASA Act. Relying on the decision of the Apex Court in '**PUSHKER MUKHERJEE V. STATE OF WEST BENGAL',** AIR 1970 SC 852, '**DR. RAM MANOHAR LOHIA V. STATE OF BIHAR & OTHERS',** (1966) 1 SCR 709 and '**DARPAN KUMAR SHARMA ALIAS DHARBAN KUMAR SHARMA V. STATE OF T.N. AND OTHERS',** AIR 2003 SC 971 and other decisions, the Court held that the detaining authority failed to substantiate the aspect that the alleged anti-social acts of the petitioner-detenu adversely affected or likely to adversely affect the maintenance of public order. Profitable, it would be to reproduce the relevant observations, which read thus:*

> *4. Having heard learned advocates 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 FIR/s cannot have any bearing on the breach of public order as required under the Act 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 within the meaning of section 2(c) of the Act. Unless and until, the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenue is a person within the meaning of section 2(c) of the Act. Except general statements (two FIRs), 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 this connection, it will be fruitful to refer to a decision of the Hon'ble Supreme Court in ***Pushker Mukherjee v. State of West Bengal, AIR 1970 SC 852****, where the distinction between 'law and order' and 'public order' has been classically laid down, which is as under:*

"Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any

law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

5. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***Dr. Ram Manohar Lohia v. State of Bihar & Others, (1966) 1 SCR 709****. In this judgment, His Lordship Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads as under:*

"....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one

of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State...."

6. In ***Darpan Kumar Sharma alias Dharban Kumar Sharma v. State of T.N. and others, reported in AIR 2003 SC 971****, the Hon'ble Supreme Court made the following observations:*

"The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1000/-. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some

extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of 'Goonda' the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention."

7. In ***Siddharth @ Sindhu Laxmanbhai Thorat v. District Magistrate, Navsari, in Letters Patent Appeal No.1020 of 2019 dated 08.05.2019****, this Court has made following observations:*

"8. Having regard to the facts and circumstances of the case, We find that though there are powers available under section 3(1) of the Act, ordinary law of Indian Penal Code under which FIRs are registered in four offences for which punishment is prescribed in the Indian Penal Code, is sufficient and order of detention cannot be passed as a short cut to exhaust such remedy. Ordinarily, this Court will be loath in interfering with subjective satisfaction of the detaining authority. While arriving at subjective satisfaction, the detaining authority is supposed to undertake objective assessment of the material available. In this connection, we may refer to the judgment of this

Court in Letters Patent appeal No.2732 of 2010, dated 28.3.2011 in the case of Aartiben W/o Nandubhai Jayantibhai Sujnani vs. Commissioner of Police & 2 others, wherein, this Court has quoted the observations made by Apex Court in the case of Pushker Mukherjee vs. State of West Bengal, reported in AIR 1970 SC 852, wherein distinction is drawn between public order and law and order. The Supreme Court observed in the said judgment as under:

"Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

8. It is also fruitful to refer to the judgment of the Hon'ble Supreme Court in the case of ***Arun Ghosh v. State of West Bengal (1970) 1 SCC 98****, wherein, the Hon'ble Supreme Court has observed as under:*

"... Public order was said to 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 tranquility. 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. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act...."

9. Further in the case of ***Mustakmiya Jabbarmiya Shaikh v. M. M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268*** *observed as under:*

"8. The Act has defined "Dangerous Person" in clause (c) of section 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'."

7.6 In ***'Mustakmiya Jabbarmiya Shaikh'*** *(Supra), the Court examined the expression 'habit' or 'habitual' offender to held that '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. However, it does not refer to the frequency of the occurrence and invariably the practice and the habit.*

7.7 This Court in Special Civil Application No. 8592 of 2020 also was considering the case of the petitioner, who was detained under Section 2(C) of the PASA Act as a

*dangerous person, on the basis of the criminal case registered against him for the offence under the Disaster Management Act, on the ground that the activities of the petitioner was affecting the maintenance of the public order and the order under challenge was not upheld. While so doing, the Court relied on the decision in '**DR. RAM MANOHAR LOHIA'** (Supra).*

7.8 On the basis of the law on the subject, what needs to be regarded by this Court is, as to whether, the kind of infraction or the order can be regarded as prejudicial to the maintenance of the public order and whether the same would be governed under the public order.

*7.9 As can be noticed from the decision of the Apex Court in '**PUSHKER MUKHERJEE'** (Supra), it is not a case of two people quarreling and fighting with each other either in their house or in the streets, and therefore, there was disorder, but, not public disorder. Such cases are dealt with the ordinary criminal laws and obviously, no person could have been detained on the ground that they were disturbing public order. Such contravention of the law would always vitiate the order, as is held by the Apex Court. But, before it is said to have affected the public order, it must affect the public at large. Therefore, the Court has drawn a line, demarcating between serious and grave danger and injury to the public interest and relatively minor breach of peace of purely local, which is primarily of local and is not likely to affect the public order. It would be vital for this Court to consider, as to whether, it can be said to be mere disturbance of law and order, leading to disorder, as provided under the PASA Act.*

*7.10 The public order, as held in case of '**ARUN GHOSH'** (Supra), is said to embrace more of the community than*

law and order. The Court even went to an extent to state that 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 tranquility.....”

8. On the strength of the law well established over the years, the facts if are looked at, the order impugned dated 25.07.2020 states that the petitioner is a dangerous person who is habituated of indulging into the activities of crime armed with deadly weapon and caused serious apprehension and threat in the society. Two offences are relied upon by the authority being I-CR No. 11191007200293 of 2020 registered with Bapunagar Police Station for the offences punishable under Sections 294(B), 506(2) and 114 of the IPC and Section 135(1) of the Gujarat Police Act and, I-CR No. 11191007200295 of 2020 registered with Bapunagar Police Station for the offences punishable under Sections 307, 326, 325, 324, 323, 294(B) and 114 of the IPC and Section 135(1)

of the Gujarat Police Act, substantiating the statements of the witnesses to the contents of FIRs.

8.1. In the First FIR being I-CR No. 11191007200293 of 2020, the petitioner has been arrested on 03.07.2020 and he has been granted bail on 06.0.2020. Likewise, the second FIR being I-CR No. 11191007200295 of 2020 is of the very next day i.e. of 15.04.2020, the arrest of the petitioner is made on 02.07.2020 and he has been enlarged on regular bail on 21.07.2020.

8.2. There are substantiating documents in the form of the statements of the witnesses as also the papers of investigation which include the Panchnama and other materials. This also refers to some of the statements recorded of the witnesses who have chosen to give in-camara statements against the petitioner who is alleged to have demanded the installments from those who are carrying on businesses and threatening those in the surrounding with the deadly weapon. It refers to the witnesses amongst whom he has caused terror and fear as well as insecurity and thus,

Invoking the powers under Section 9(2) of the PASA Act, their identity has been kept secret.

9. Looking firstly at the FIR being I-CR No. 11191007200293 of 2020 registered with Bapunagar Police Station on 14.04.2020 for the offences punishable under Sections 324, 294(B), 506(2) and 114 of the IPC and Section 135(1) of the Gujarat Police Act, where complainant Vijay Durgesh is a tempo driver. On the date of filing of FIR, he had gone to Aslali for transporting vegetables for sale. After delivering the same at Nana Chiloda, he returned to his residence at Soneriya Block No. 24-25 where one Ketan Thakor, Dipak Thakor, Ketan Parmar and Rahul Patni were sitting and when his wife, his sister-in-law, his father-in-law along with his brother-in-law and their neighbor Nanu Patni asked all these four persons to go home and not to sit there, these persons started abusing them and when they were asked not to use filthy language , they all took out knife and Dipak gave blow on the left forearm and on the left side of the stomach of the complainant, Ketan gave knife blow on the left side to his sister-in-law and to his brother-in-law on his right

shoulder and the left side in the back. Rahul gave blow on the left side of the chest to the neighbor Nanu Patni and these four persons gave life threats to them and also conveyed in no unclear terms that if anything is revealed to the police, dire consequences would follow. This was followed by hospitalisation of all concerned and the FIR as also series of actions of investigation which included panchnama of recovery and discovery of knifes and the recordance of statements of all injured persons. They are allegedly habituated of consuming liquor. There are various witnesses who have spoken of criminal acts and activities on their parts. The injury certificate of Shardaben Hospital also shows the corresponding injuries which substantiate the say of the complainant – Vijay, neighbor – Nanu Patni who have been given blows by the present petitioner, brother-in-law Bhavesh and sister-in-law of the complainant. Not only the injuries which have been stated in the statements are being noticed, the timings also match. It appears that after this incident, some of them had fled and absconded from the clutches of law. The present petitioner had gone to Patan and shielded himself and on his return, he was arrested on 03.07.2020.

9.1. The second FIR is of the incident of the very day of the first FIR, however, it is lodged the next date, i.e. on 15.04.2020. It is given by one Gauriben Kanubhai Patni. The incident had happened on 14.04.2020 at around 10:00 o'clock in the night when she was sleeping. She had heard shouts outside her home and she with her husband and both the children when had come out, they saw that Kalio Patni, Rahul Patni, Gautam Patni and Sherawalo were armed with the sword, pipe and knife and were shouting as to who had fought with their friend and thereafter when Suraj Divakar entered, all the four had started abusing him and Kalio gave him sword blow and he and her husband when attempted to save Suraj, Kalio gave a sword blow to her husband and Gautam gave blow on the left hand of the complainant and Sherawalo had given knife blow to the son of the complainant. In the meantime, his nephew Tino and Shailesh reached to the place and when they attempted to save them, Rahul gave sword blow to Tino on his forehead and since the people gathered, they all ran away from the place and the complainant and others were shifted to the hospital. This also

had got panchnama and statement of various witnesses who have been injured and those who were gathered at the time of incident. The injury certificates are also there on the record. The FSL also has examined the place of the incident. The petitioner was interrogated and he had confided that he was sitting with his friends at around 10:00 o'clock in the night, Suraj had stopped them and asked them not to talk so loudly, this has resulted into acrimonious debate and Dilip had asked him not to cause any dispute, however, he started abusing and that is how this incident had arisen.

9.2. The Court has granted bail to the petitioner on the ground that those who were injured seriously had been discharged from the hospital. The Court opined that they should not be detained in the jail till the trial gets over which may take a longer time. There are witnesses who have spoken of his forcible extraction of money by way of installment for carrying out his business. The identity of the witness has been kept secret who has spoken of the person, who is one of the members he had been threatened 4-5 months back demanding the installment of Rs. 2,500/- for carrying out his

business in Rakhyal area and also has threatened him of his life by taking out knife.

10. Looking at both the complaints, although it is argued that the disputes are affecting the individuals and they are the disputes of personal nature, however, this Court cannot be oblivious of the fact that the petitioner and others who were causing nuisance in the area, were merely being asked and requested not to cause such nuisance. The statements recorded of the witnesses also revealed that they had merely asked them not to sit at particular place as that was a residential area or not to talk loudly, it is this communication which had generated the reaction to an extent that the petitioners and others, armed with deadly weapons had indiscriminately gave blows to each one who was present disregarding the fact that one of them was a lady member. In the first FIR, the blow given to the neighbor of the complainant – Nanu Patni on his vital part of the body being on the chest and in the second FIR, the petitioner was armed with sword and gave blows to two persons and to one of them, it was on the head and to the other, on the forehead.

10.1. This Court is conscious of the decisions discussed hereinabove insist on prejudice to the public order for invocation of order of detention. They also further require that the action or the activities shall have to be in aggravated form affecting the society even if such prejudice to the public order has a localized effect. This is one such matter where regardless of the young age of the petitioner, it can be noticed that his activities in a gang caused serious injuries to the persons for no fault of theirs and without the slightest issue of personal enmity or tiff on the part of the complainant. In this document, the statement of the secret witnesses whose names have not been disclosed under sub-section (2) of Section 9, when regarded, they cannot be brushed aside as stereotype statements and if at the time when the authority had noticed the two incidents in a single day and his behavior and conduct, the subjective satisfaction of preventing such person from indulging into the very activities by invocation of powers of PASA, in the opinion of this Court, need not be interfered with. From the material which has been presented before this court, there does not appear to be any

requirement for the court to interfere in the subjective satisfaction arrived at by the respondent authorities and to replace the judgement of its own in the place of that of the authority.

11. As a parting note, noticing the young age of the detenue and requirement to mould him for a promising future,reference shall be needed of the communication received from the office of Director General of Police, Prison and Correctional Administration, Gujarat State dated 14.12.2020. This Court in case of **Dharmesh @ Batako Rameshbhai Chunara vs. State of Gujarat [SCA No. 12008 of 2020 with SCA No. 12615 of 2020] dated 16.12.2020** discussed in detail, the aspect of rehabilitation and reformation of detenue as under : -

> *"10. Pursuant to the order passed by this Court on 03.12.2020, learned AGP has pressed into service the letter received from the office of Director General of Police, Prison and Correctional Administration, Gujarat State dated 14.12.2020 and furnished the following details: -*
>
> > ***"****1. Higher Education: The various courses are being run by the Indira Gandhi National Open University and Dr.Baba Saheb Ambedkar Open University at various jails in which any undertrial / convict /*

PASA detenues can be participated for education.

2. Std.10th & 12th The four Central Jails are declared as an examination centre for Std.10th & 12th examination in which, any convict / under trial / PASA detenues can give examination.

3. Anganwadi : An arrangement of Anganwadi is being provided to the children up to the age of 6 years' living with their mother in jail. A sanction is accorded to run Anganwadi outside four Central Jails from 23/07/2020. But, due to the present Covid-19 pandemic situation, the same has not been started and will be started shortly which will also be benefitted for the staff / women prisoners' children up to the age of 6 years and can play each other.

4. Change of mindset of the prisoners : Various Cultural, Ethical , Entertainment, Yoga, Shibir, Vipasna, Addiction liberalization programmes are being arranged for undertrial / convict / PASA detenues at various jails across the State.

5. Relief Scheme : Rs.25000/- is being given by the Social Welfare Department to the convict prisoners whose sentence has been completed for 5 years or more and are falls under the poverty line to enable the members of the prisoner to carry out employment / small business to earn their livelihood.

6. Jyotirgamay Scheme : Jyotigramaya Scheme has been started at various jails across the State to

provide benefit of various schemes of the Government to the prisoners who are to be released from jail. They are also familiarized with the various schemes of Government by way of giving kit.

7. Rehabilitation / Reformation activities (Industries and Vocational training):

- *Various short term training courses are being arranged at various jails across the State to provide the Skill Development Training through Pradhan Mantri Skill Development Scheme, ITI Skill Development Centre, Self Employment Training Institution at Village level and Volunteer Organization, in which, any prisoner can be participated and avail vocational training.*

- *Under the Pradhan Mantri Skill Development Scheme, various training such as pickle making, backing, technician, cooking, bamboo basket maker, bamboo mat, weaver, TV repairing, assistant electrician, street food vendor, multi fusion cook, house wiring are being provided.*

- *The skill development training such as computer training, basic wood work, basic electrical, sewing machine, beauty parlor, spoken English, wiring course, plumber, DTP & printing publishing assistant, arc and gas welder, electrical module – 1, wiring, spoken English and communication skill training is being provided regularly by the ITI institution.*

- *Various training in various field such as incense making, vegetable nursery, paper file, cover making, two wheeler repairing, electrician, farming, animal husbandry is being provided through Self Employment Training Institution at Village level.*

- *Various training in various filed such as beauty parlour, diamond polishing, auto repairing, audio voice book recording for blind people, sanitary pad making, sewing training, bakery training, painting, auto repairing, basic computer, waste plastic weaving, mud work, embroidery, saree zari work is being provided by the Volunteer Organizations.*

- *For the menstrual health of women prisoners, the sanitary wending machine and incinerator is being provided by the State Legal Services Authority, Hon'ble High Court at four Central Jails across the State.*

- *Various activities under the Industries Department in the field of weaving, carpentry, tailoring, bakery, printing, chemical, binding, ironing, bhajiya house, cow shed, agricultural are being run so as to provide employment to the convict prisoners as well as to reestablish themselves after they release from jail.*"""

12. Let the petitioner be engaged in some constructive

activities while in jail to enable him to be a better being so that, when out, at the end of the statutory period, all possible efforts shall have been made to prepare him for a better future.

13. Resultantly, no interference is desirable. The petition fails and is dismissed. Notice is discharged.

(SONIA GOKANI, J)

MISHRA AMIT V./Bhoomi