IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10415 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

==========

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 ?	

==========

VISHAL @ RAAM DINESHBHAI PRABHUDAS BHIL (DHUNDHIYA)

Versus

STATE OF GUJARAT

==========

Appearance:

VISHAL K ANANDJIWALA(7798) for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the

Respondent(s) No. 1

DS AFF.NOT FILED (R)(71) for the Respondent(s) No. 2

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

==========

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

Date : 30/12/2020

ORAL JUDGMENT

1. This is a petition preferred by the petitioner seeking to challenge the detention order passed by the respondent authority numbering PCB/DTN/PASA/534/2020 dated 23.07.2020 passed under sub-section (1) of Section 3 the provisions of Gujarat Prevention of Antisocial Activities Act, 1985 (hereinafter referred to as the 'PASA Act').

2. The brief facts leading to the present petition are as follows:

2.1. The petitioner seeks to challenge the order of detention which has been passed in exercise of powers under sub-section (1) of Section 3 of the PASA Act by the respondent

no.2 branding him as a 'Dangerous Person' who is presently at Lajpor jail, Surat on the ground that the order suffers from non-application of mind and is in violation of the Articles 21 and 22 of the Constitution of India. On the basis of three offences registered with the Shahibaug Police Station, the said order of detention has been passed allegedly with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order.

2.2. According to the petitioner, there is no other alternative efficacious remedy and hence, this petition is preferred. The three offences which have been depended upon by the authority concerned are as follows: -

(i) II-CR No. 3498 of 2019 registered with Shahibaug Police Station for the offences punishable under Sections 323, 294(B), 506(1) and 114 of the IPC, on 19.11.2019;

(ii) I-CR No. 11191031201091 of 2020 registered with Shahibaug Police Station for the offences punishable under Sections 143, 147, 148, 149, 323, 294(B), 506(1) of the IPC

and Section 135(1) of the Gujarat Police Act, on 14.06.2020;

(iii) I-CR No. 11191031201410 of 2020 registered with Shahibaug Police Station for the offences punishable under Sections 143, 147, 148, 149, 324 of the IPC and Section 135(1) of the Gujarat Police Act, on 13.07.2020.

2.3. According to the petitioner, so far as the first offence is concerned, the only allegation against the petitioner is that he gave a life threat to the first informant. However, he was enlarged on bail by the police itself. In the second offence, his name is not there in the FIR, even there is no role attributed to him and in the third FIR, according to the petitioner, it is a false FIR registered against him. It would not fall in the category of violation of public order and therefore, the order passed by the detaining authority requires interference.

2.4. It is emphasized that the petitioner is enlarged on bail in all the three offences and the last release of the petitioner was on 22.07.2020 and therefore, on 23.07.2020 the order of detention is passed to harass him. The order is passed

mechanically without any material and with complete non-application of mind, therefore this petition is preferred with the following prayers: -

> *"(A) Your Lordships be pleased to issue writ of mandamus or writ in the nature of mandamus, writ of certiorari or writ in the nature of certiorari or any other writ, order or direction against the respondents by this Hon'ble High Court, quashing and setting aside the detention order dated 23/07/2020 passed by respondent no.2 at Annexure A, to the petition placing the detenue under preventive detention, in purported exercise of their powers under the Gujarat Prevention of Anti-Social Activities Act, 1985, as being illegal, null and void and further be pleased to release the petitioner forthwith;*
>
> *(B) Your Lordships be pleased to release the detenue on parole from his detention pending the admission, hearing and final disposal of this petition;*
>
> *(C) Your Lordships may be pleased to grant such other and further reliefs, as are deemed fit, in the interest of justice."*

3. Rule came to be issued by this Court (Coram: Mr. A.Y.Kogje, J.) on 02.09.2020 and the matter has been fixed for final hearing where the Court on 02.12.2020 called for the statements of secret witnesses with disclosure of names before the Court in a sealed envelope which has been placed

before the Court to verify the genuineness of the same.

4. Learned advocate Mr. Vishal Anandjiwala appearing for the petitioner has been heard at length who has urged to quash and set aside the order of detention. It is strenuously urged by him that the detaining authority has chosen not to move an appropriate application for cancellation of bail. If there was a genuine apprehension based on the material to arrive at a subjective satisfaction that the petitioner may indulge into any such activity after being released on the bail, the detaining authority ought to have approached the Court for cancellation of bail. No such move has been made and thus, instead of firstly availing the alternative remedy, when drastic remedy of PASA is availed by the authority, the Court needs to interfere.

4.1. He further has stated that the petitioner has been branded as a 'Dangerous Person' on the basis of the statements recorded of the witnesses under Section 9(2) of the PASA Act however, no specific date, time or place is mentioned indicating the activities of the detenue being in

any manner questionable. Therefore, the statements are stereotyped and vague in nature and based upon such statements, the detaining authority has passed the order. It is to be held as a clear non-application of mind.

4.2. He further has urged that there is no material available with the detaining authority to indicate as to how the public health or public order is disturbed. It is emphatically urged that the conduct of the petitioner is of such a nature which can be dealt with under the ordinary law and there is no requirement of preventively detain him. Various documents which have been placed before the detaining authority have not been supplied to the detenue, therefore,on that count also, the order of detention is required to be quashed.

4.3. He further has urged that for the offences which have been registered against the petitioner, he will be facing the trial under the ordinary law, but he cannot be termed as a dangerous person. According to learned advocate for the petitioner, there has been a false implication as the order of detention is an act born out of mala fide actions of

authorities.

4.4. He has sought to rely on the decision rendered by the Division Bench of this Court in case of **Vijay Alias Ballu Bharatbhai Ramanbhai Patni (Kaptiywala) vs. State of Gujarat [Letters Patent Appeal No. 454 of 2020] dated 31.08.2020 and other decisions** in support of his arguments.

5. This Court has heard learned Assistant Government Pleader Mr. Utkarsh Sharma appearing for the respondent – State who has submitted emphatically that there are more than two offences registered against the petitioner, in fact, there are three offences and the statement of secret witnesses and the conduct would surely entitle the authority to arrive at subjective satisfaction and it has been so done in the instant case which does not deserve any kind of interference.

5.1. There had been invocation of PASA earlier, however, his conduct has not been improved at all and that has also not precluded him from indulging into the activities repeatedly.

In such circumstances, if the authority concerned has been of the opinion that the ordinary law of the country is unable to sustain his activities and preclude him from indulging into the very activities, no foul play can be read in that.

5.2. According to the learned AGP, it is not the entire society which may be affected but even if its impact is grave and localized, then also, the Court need not interfere in the subjective satisfaction arrived at by the detaining authority.

6. Having thus heard both the sides extensively and also having carefully examined the material on record along with the authorities which have been relied upon, at the outset, the law on the subject as to who can be called the dangerous person, deserves the reference. Instead of independent examination of the same, it would be profitable to reproduce the findings and observations made by this court in the decision 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, empowers the State Government that, if, it is satisfied with respect to any person that with a view to prevent 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 of '**DR. RAM MANOHAR LOHIA'** (Supra).*

*7.8 In **Commissioner of Police V. C.Anita(Smt.) (2004) 7 SCC 467,** the Apex Court examined the issue of 'public order' and 'law and order' to hold and observe thus: **....**"the crucial test is whether the activities of the detenue were prejudicial to public order.While the expression'law and order' is wider in scope inasmuch as contravention of law always affects order,'public order' has a narrower ambit,and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of law and order and public order is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it would raise problem of law and order only. It is the length, magnitude and intensity of terror waves unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting public order from that concerning law and order. The question to ask is:*

' Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the

tranquility of the society undisturbed?

This question has to be faced in every case on its facts."

*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.*

7.11 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 law and order or whether the

same would be governed under the public order which has disturbed the tranquility of the society in the specified areas!.....”

7. Reverting to the facts of the instant case, it is also needed to be mentioned that there is no stale material as has been alleged by the petitioner. The Court cannot be oblivious of the fact that he was in the jail in relation to the three offences which have been considered against him. The last order of bail was on 22.07.2020 and the authority has acted promptly to hold that his prevention is necessary to stop him from indulging into the very natured activities. It would be, therefore, not possible to uphold the said version of the petitioner by terming the same to be stale.

7.1. Reference of the decision of the Apex Court rendered in case of **Subramanian vs. State of TN & Another [(2012) 4 SCC 699]** is also needed to be made at this stage where the order of preventive detention was passed relying on the past incidents to arrive at a subjective satisfaction that the detenue was habitual offender. Apart from the year 2013’s incident on the basis of which the detention order was passed, two incidents took place within a span of six months

in the year 2010 and one in the year 2008. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which had been precisely stated in the grounds of detention. The Apex Court has held that all the incidents mentioned in the grounds of detention, precisely and clearly which substantiated the subjective satisfaction arrived at by the Detaining Authority as to how the acts of the detenu were prejudicial to the maintenance of public order. Here, one of the offences is of November, 2019 whereas others are of June,2020 and July,2020 only and therefore, this submission receives no positive nod.

8. Reverting to the facts of the instant case, the first FIR dated 19.11.2019 is by Chetan Keshaji – complainant who has stated that while he was going to his residence from his hotel, at around 12:30 in the afternoon, at the end of Haripura Bridge his cousin was called who had a love affair with a girl and he was abusing often the relatives of that girl. He was also explained that he was not staying at this place. At that time one Ritik staying outside, had also started

abusing and called Vishal Dineshbhai, Pratap Lallubhai and Kamleshbhai. All the three rushed to the place with sword in their hands and abused him and when infuriated, they started giving kick and fist blows. The present petitioner – Vishal also had given life threat to the first informant. He was bodily injured and his parents and brother all had intervened and also called the police control, these persons had run away from the place. The substantiating investigation papers have been already forming part of the record which shows the recovery and discovery of sword as also the statements of other witnesses other than the complainant. Interrogation of the present petitioner is also forming part, although, legally it is not admissible under the law. The fact remains that the complainant itself indicates of his having rushed to the place with sword and also giving kick and fist blows. It also reflects the recovery of sword. The Court has granted bail to the present petitioner in the said offence on 03.02.2020.

8.1. The second FIR is of dated 14.06.2020 where the complainant – Sanjaybhai Patel states that on 04.06.2020 at around 8:00 o'clock in the evening, one Umeshbhai Mali was

carrying out his business of selling vegetables with his hand lorry. Because of pandemic due to COVID-19 virus, he was asked not to stand in the midst of the roads of the society and to park his larry aside. At around 9:00 o'clock while he was standing near his residence, Umesbhai, his brother Santosh and his son had come in a four-wheeler vehicle and started shouting as to who is saying no to stand at the place he carried out the business, therefore the complainant stated that all the members of the society would object to this. He also requested not to abuse nor to exchange heated communication in front of his house and at that stage Narendrabhai Modi and Upendra Panchal had intervened, however, they went on abusing and at that stage about eight persons had rushed to the place. One of them had sword. They all started giving kick and fist blows and all persons in the vicinity including his wife when had intervened, they were also manhandled. Immediately the police control was intimated. He did not know these seven persons and the person who had rushed to the place and also threatened him with weapons of his life. The wife of the complainant, in her statement on 15.07.2020 has named the present petitioner.

In this offence the petitioner has been bailed out on the very day i.e. on 16.07.2020 by the police.

8.2. The third FIR of dated 13.07.2020 is given by one Kamleshkumar Bhil where he stated that on 12.07.2020 when he and his wife both had gone to meet his friend Ravi who is residing at Dariyapur were returning at around 11:30 in the night, the present petitioner, his cousin Bharat and Bharat's brother as well as petitioner's father and others had stopped him and asked him as to why before a month, there was a false complaint given. They had threatened the complainant to withdraw the same. The complainant had told that let that be decided by the Court. The petitioner instantaneously abused the complainant and his wife and when he was being stopped, he had given a blow of sword on the left ear of his and Bharat also gave another blow on his face. Dilip also had sword in his hand who had injured the complainant on his left wrist. They all formed a formidable gang and also had given kick and fist blows to him and his wife, thereafter, people from the surrounding gathered and police was called. There are statements of witnesses who had

spoken along the line of the complaint. Complainant's wife who was accompanied him has stated that for withdrawing the complaint given earlier against the petitioners and others, he had abused her husband and her. The Court had also given police custody remand to these persons and later on the petitioner was enlarged on regular bail on 22.07.2020.

9. Over and above these acts of crimes,there are two statements of the secret witnesses one of whom is a businessman who knows the present petitioner as a highhanded and dangerous person. He is also said to be carrying deadly weapon all throughout. People in the area are scared of him and according to him, about two months back at the Civil Corner, while he was standing on a mobile larry, selling snacks, this petitioner and his associates have approached him and gave him kick blow to insist for a place where he was sitting. When he asked him why would he get up since he was yet to have his snacks, he took out a knife and gave a life threat to say that he was a 'dada' of the area. He was also given a kick and fist blows and when this witness started hue and cry, the people from surrounding gathered.

He also rushed to the crowd with open knife which caused serious apprehension in the minds of the people who ran halter shelters in the surrounding.

9.1. Another statement is of 23.04.2020 by one Autorickshaw driver who is operating his Autorickshaw in the said area who knows the present petitioner. According to whom, three months back while he was waiting near Asura Bridge at around 2:00 o'clock in the afternoon, the present petitioner with his associates had hired his Autorickshaw to Naroda as they were to come back to the Asura Bridge. On return, he when asked for fare, the petitioner was infuriated and started threatening him and also gave him kick blows. Petitioner also by taking out knife aimed the same at stomach and said that he will take out his intestine. The witness chose to give in-camera statement as he was very scared of consequences.

10. If one looks at all the three offences which have been relied on by the authority to arrive at a subjective satisfaction, the Court noticed that in none of the matters, the petitioner

had any personal dispute. Of course, in the first FIR dated 13.07.2020, it can be said that he had wanted the complainant to withdraw the complaint given against him some months back. That too was not a kind of any personal dispute that the complaint was given. These activities of the petitioner and his associates had caused so much of nuisance and apprehension in the area which resulted in giving of complaint, however, to ensure that even the legal remedy is not pursued by the person, the act is committed which jeopardizes the life of the persons in the surroundings by perpetrating serous life threats and continued activities.

11. It is to be noticed at this stage that the demarcation of law and order and public order is quite clearly visible from the decision of the Apex Court in case of **Pushkar Mukherjee & Ors. vs The State of West Bengal [1970 AIR SC 852].** At the same time, it will be difficult for the Court to hold that the acts and activities of the petitioner which have been considered by the detaining authority to arrive at a subjective satisfaction and to hold that they were undermining the public order, it can be also noticed from the absence of any

personal dispute that any of those persons to whom he has caused injuries, he is being armed with weapons in each matters and his having taken up the law in the hands, at the instance of the members of the gang whom he called his friends and associates, resulting into causing of atmosphere of fear and insecurity in the locality. Even if the impact is localized, its gravity and aggravated form which caused prejudice to the public order cannot be overlooked.

11.1. In the decision of **Subramanian** (supra) the detenue was habitually committing crime in a manner prejudicial to the maintenance of the public order as per the case of the detaining authority and he was branded as a Gunda as contemplated under Section 2(F) of the Tamil Nadu Act. The authority found compelling necessity to detain him in order to prevent him from indulging into any such activity which may prejudice the maintenance of public order. The Apex Court held as under: -

> *"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."

11.2. It was contended before the Apex Court also that there is a difference between law and order and public order, the Apex Court held thus: -

"12. The next contention on behalf of the detenu, assailing the detention order on the plea that there is a difference between `law and order' and `public order' cannot also be sustained since this Court in a series of decisions recognized that public order is the even tempo of life of the community taking the country as a whole or even a specified locality."

12. In the instant case also, the detenue had abused the complainant in filthy language. His associates also had threatened him. The detenue has not only threatened the complainant, but, he was also armed with the weapon in both

the matters. Complainants had been manhandled and had been given indiscriminate blows and when he raised alarm of rescue,those who approached were also threatened by the detenue and their associates. These habitual acts have resulted into not only law and order situations, but also, of causing dent in public order in localized area.

12.1. The grant of bail orders in favour of the petitioner and non challenge of the same by the State, of course, has been raised as one of the grounds and as held by this Court in case of **Bharat S/O Mepabhai Bharvad vs. State of Gujarat [Special Civil Application No. 10387 of 2020],** it would be desirable for the State to challenge by way of an appeal, but however, that per se cannot be termed as wholly fatal. The very object and invocation of this provision is to prevent this person and as submitted by the learned AGP, the procedure of cancellation of bail as may take a longer time, if the State has chosen to invoke the powers to prevent him from committing recurrently such crimes, the Court sees no reason for interference in this matter.

13. Reliance is placed on the decision of this Court

rendered in case of **Imran Alias Imlo S/O Hasanbhai Ismailbhai Kataria Throu Brother Irfan Jamalbhai Kataria vs. State of Gujarat [Letters Patent Appeal No. 660 of 2020] dated 07.10.2020**, where the detaining authority had taken into consideration four criminal cases registered against the detenue at Gondal City Police Station which were serious in nature and the Division Bench on the ground of the activities of the detenue were not in any manner causing prejudice to the public order and thus, had not sustained the order of detention. In **Vijay Alias Ballu Bharatbhai Ramanbhai Patni (Kaptiywala)** (supra) on the ground of person being dangerous person, the order of detention was passed which the Division Bench had quashed and set aside the order of learned Single Judge. It is to be remembered that here also, the distinction which has been marked is of law and order and the prejudice to the public order, based on the decisions of the Apex Court which are propounding the fundamental principles, on which all matters are built.

13.1. In every matter, the question undoubtedly and predominantly will need to be addressed on the strength of

materials placed before the detaining authority as the clarity of law is one aspect but the applicability of the same on the basis of facts of each case is a vital aspect. It is to be emphasized here that it is not only the statements of secret witnesses which have been regarded, but the incidents which depict his personal trait, high handedness, overpowering and persistent criminal conduct causing panic and fear amongst the people, having serious localized impact and difficult to be checked and controlled by the ordinary law which had led to the forming of an opinion of the detaining authority that the same would warrant detention. This court ordinarily is not required to replace its discretion in place of the detaining authority when the subjective satisfaction for invocation of power under subsection (1) of Section 3 of the PASA is arrived at on cogent, precise and relevant materials. It is also to be noted that before the Division Bench in the above matter, there was no contemporaneous record of anonymous witnesses and the same had not been disclosed by way of affidavit-in-reply. Here, this Court had called for the name of witnesses whose statements are relied upon to further reinforce the decision of detention along with the FIRs which

have been furnished to the Court and so as to protect them from the hands of the petitioner and his associates, those names are not revealed which cannot be termed as fatal to the decision.

14. Bearing in mind the decisions of Amanulla Khan Kudeatalla Khan vs. State of Gujarat so also Subramanian vs. State of TN & another, on recognizing that the motive of every crime committed not born out of personal disputes as would ordinary is noticed and its serious impact as stated hereinabove, the Court is of the opinion that subjective satisfaction arrived at by the authority concerned deserves no interference.

15. Resultantly, this petition fails and is dismissed. Rule is discharged.

(SONIA GOKANI, J)

MISHRA AMIT V./Bhoomi