

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 144 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 9146 of 2020

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DINESH @ DINIO S/O ISHWARBHAI SHIRSATH THRU HIS NEXT FRIEND
MUKESH SURESH GAYAKWAD
Versus
THE STATE OF GUJARAT

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Appearance:

MR GAJENDRA P BAGHEL(2968) for the Appellant(s) No. 1
for the Respondent(s) No. 2,3
MR CHINTAN DAVE, AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 31/03/2021

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1. We have heard Mr.Gajendra Baghel, learned counsel for the appellant and Mr.Chintan Dave, learned Assistant Government Pleader for the State respondents.

2. The present Letters Patent Appeal has been preferred under Clause 15 of the Letters Patent assailing the correctness of the judgment and order dated 11.12.2020 passed by the learned Single Judge in Special Civil Application No.9146 of 2020, whereby the writ petition challenging the order of preventive

detention was dismissed.

3. Learned counsel for the appellant submitted that there are only two cases registered against the appellant. First being a case under Sections 386, 323, 504, 114 and 427 of the Indian Penal Code and Section 135(1) of the Gujarat Police Act based on an FIR dated 29.11.2019 and the second is about an offence under Sections 307, 504 and 506(2) of the Indian Penal Code and Section 135(1) of the Gujarat Police Act based on an FIR dated 11.03.2020. Apart from it, there is no other material against the appellant. The invoking of jurisdiction under the preventive detention law is totally unjustified as there was neither any disturbance of public order nor the appellant can be said to be a dangerous person. It is also submitted by the learned counsel that the appellant had been falsely implicated in the said two cases and he is already on bail. It is also submitted that the appellant is in custody since 10.06.2020. It is next submitted that a recent Division Bench judgment of this Court dated 31.08.2020 passed in the case of **Vijay Alias Ballu Bharatbhai Ramanbhai Patni vs. State of Gujarat, being Letters Patent Appeal**

No.454 of 2020, squarely covers the case of the present appellant.

4. On the other hand, Mr.Chintan Dave, learned Assistant Government Pleader submitted that the order of detention is fully justified and the detaining authority after due satisfaction has passed the said order. It is also submitted by Mr.Dave that apart from the two First Information Reports, there were three other statements recorded in camera and as such the order of the learned Single Judge does not suffer from any infirmity in dismissing the petition. The learned Single Judge after dealing with the entire material on record declined to interfere with the subjective satisfaction of the detaining authority in holding that the appellant was a dangerous person. This Court as such may not interfere with the order of the learned Single Judge and dismiss the appeal.

5. In the judgment dated 31.08.2020 in the case of **Vijay alias Ballu (supra)**, the issue relating to public order and law and order problem had been dealt with in detail. Law of preventive detention has to be construed not as in an ordinary criminal proceedings

of detaining or arresting a person who is said to have committed crime where the procedure is provided and the remedy is available. However, the law of preventive detention is to be strictly followed as per the statute and the settled law on the point. In the present case, we find that the two FIRs related to an offence of causing hurt only. By no stretch of imagination can we hold that such incidents could describe a person as a dangerous person.

6. The other two statements recorded in camera could be of help to the detaining authority in passing the detention order where at least *prima facie* the detinue could be said to be a dangerous person on account of his known criminal activities. The said view has been discussed and ratio laid down in the judgment of this Court in the case of **Vijay alias Ballu (supra)** after considering in detail the law on the point.

7. We are accordingly of the view that the order of detention cannot be sustained. Accordingly, the appeal succeeds and is allowed. The judgment and order of the learned Single Judge dated 11.12.2020

passed in Special Civil Application No.9146 of 2020 is set aside. The detention order dated 10.06.2020 is quashed. The appellant be set at liberty forthwith if not required in any other criminal case.

(VIKRAM NATH, CJ)

(BHARGAV D. KARIA, J)

GAURAV J THAKER