

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8389 of 2021**

=====

SAHIL S/O SUNILBHAI SHARMA THROUGH KIRANBEN S/O SUNILBHAI
SHARMA
Versus
STATE OF GUJARAT

=====

Appearance:

MR. KISHAN H DAIYA(6929) for the Petitioner(s) No. 1
MR HARDIK MEHTA, AGP for the Respondents

=====

CORAM:HONOURABLE MR. JUSTICE PARESH UPADHYAY

Date : 30/06/2021

ORAL ORDER

1. Challenge in this petition is made to the order passed by the Commissioner of Police, Surat City dated 31.05.2021, whereby the petitioner is detained under the Gujarat Prevention of Anti Social Activities Act, 1985.

2. Learned advocate for the petitioner has submitted that, mere filing of two FIRs against the petitioner itself is no ground, for the detaining authority, to arrive at the conclusion that the activities of the petitioner are prejudicial to the maintenance of the public order. It is further submitted that, no legally sustainable satisfaction is recorded by the detaining authority before passing the impugned order and therefore the impugned order be quashed and set aside.

3. Learned Assistant Government Pleader for the respondent State Authorities has supported the detention order passed by the detaining authority and has submitted

that the impugned order is based on sufficient material and the detaining authority has rightly arrived at the conclusion that the activities of the petitioner are prejudicial to the maintenance of the public order. It is submitted that this petition be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds that the detaining authority has exercised the powers, treating the petitioner as a 'dangerous person' within the meaning of Section 2(c) of the Act. Two FIRs, which is the basis to treat the petitioner as such a person is referred to in the impugned order and further details in that regard are on record. Said two FIRs and other material which is on record is considered by this Court. On conjoint consideration thereof it transpires that, the detaining authority fell in error in treating the activities of the petitioner as prejudicial to the maintenance of the public order. The distinction between 'the law and order' and 'the public order' needs to be kept in mind, in view of the decision of the Supreme Court of India in the case of Pushker Mukherjee v/s. State of West Bengal reported in AIR 1970 SC 852. The impugned order, on facts, fails on this test. The impugned order therefore needs to be quashed and set aside. It is noted that, in the grounds of the detention, the detaining authority has recorded to the effect that, according to him, the activities of the petitioner create a sense of alarm and feeling of insecurity in the minds of public at large, however on weighing this vis-a-vis the material on record, this Court finds that, the citation of such words is more in the nature of rituals rather than with any significance to the alleged activities of the petitioner. In totality, this Court finds

that, the impugned order is unsustainable and needs to be quashed and set aside.

5. For the reasons recorded above, the following order is passed.

5.1 This petition is allowed.

5.2 The impugned order passed by the Commissioner of Police, Surat City dated 31.05.2021, is quashed and set aside.

5.3 The petitioner / detenu is ordered to be set at liberty forthwith, if not required in any other case.

5.4 Rule is made absolute in above terms.

5.5 Registry to communicate this order by way of FAX / E-mail to the concerned Authority.

Direct service is permitted.

(PARESH UPADHYAY, J)

MOBHATI/PS/87