

15. Since now, the dispute with reference to the impugned F.I.R. is settled and resolved by and between parties which is confirmed by the original complainant and victim through their learned advocate, the trial would be futile and any further continuation of proceedings would amount to abuse of process of law. Therefore, the impugned F.I.R. is required to be quashed and set aside in view of peculiar facts of the case being exception to the general principle of law to decline the quashment of proceedings of the nature like present one.

16. In view of this position, this application is allowed. Impugned F.I.R. being C.R.No.I-4 of 2017 registered with Kalol Taluka Police Station, Gandhinagar and as well as Special Case (Pocso) No.54 of 2017 pending before the learned Special Judge (Pocso), Gandhinagar against the present applicant are hereby quashed and set aside. The applicant will produce certified copy of this order before the concerned learned Sessions Court and also before the investigating officer for necessary action. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Result:- FIR quashed.

**ABC 2020 (I) 70 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(S.H.Vora, J.)

Special Civil Application No 21602 of 2019

Decided on 17 December 2019

MOHSIN @ BHEDIYA AMIRMIYA SHAIKH - Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Indian Penal Code, 1860 – Section 379 – Gujarat Prevention of Anti-Social Activities (PASA) Act, 1985 – Section 3(2) – Invocation of PASA – Registration of offences u/s 379 – Held, simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order – the authority cannot have recourse under the PASA Act – no other relevant & cogent material exists for invoking power u/s 3(2) – Petition allowed. (Para 6)

January 2020

- Held:-** In view of above, I am inclined to allow this
a petition, because simplicitor registration of FIR/s by itself cannot
have any nexus with the breach of maintenance of public order and
the authority cannot have recourse under the Act and no other
relevant and cogent material exists for invoking power under
section 3(2) of the Act. In the result, the present petition is hereby
b allowed and the impugned order of detention No. PCB/DTN/
PASA/690/2019 dated 27.6.2019 passed by the respondent -
detaining authority is hereby quashed and set aside. The detenué is
ordered to be set at liberty forthwith if not required in any other
c case. (Para-6)

Counsel:- For Applicant(s): Mr Bhunesh C Rupera, Adv.

For Respondent(s): Mr Hardik Metha, Adv.

Cases Referred:-

- d *Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852], (Para-5)*

JUDGMENT

S.H.VORA, J.: - 1. Rule. Learned A.G.P. waives service of Rule
for the respondent - Jail Authority.

- e 1. Heard learned advocates appearing for the respective parties.
2. The present petition is directed against order of detention
dated 27.6.2019 passed by the respondent - detaining authority in
exercise of powers conferred under section 3(2) of the Gujarat Prevention
of Anti Social Activities Act, 1985 (for short "the Act") by detaining the
f petitioner - detenué as defined under section 2(c) of the Act.
3. Learned advocate for the detenué submits that the order of
detention impugned in this petition deserves to be quashed and set
aside on the ground of registration of offences under Section 379 etc.
g of the Indian Penal Code by itself cannot bring the case of the detenué
within the purview of definition under section 2(c) of the Act. Further,
learned advocate for the detenué submits that illegal activity likely to
be carried out or alleged to have been carried out, as alleged, cannot
h have any nexus or bearing with the maintenance of public order and
at the most, it can be said to be breach of law and order. Further,
except statement of witnesses, registration of above FIR/s and
Panchnama drawn in pursuance of the investigation, no other
relevant and cogent material is on record connecting alleged anti-
social activity of the detenué with breach of public order. Learned

advocate for the petitioner further submits that it is not possible to hold on the basis of the facts of the present case that activity of the detinue with respect to the criminal cases had affected even tempo of the society causing threat to the very existence of normal and routine life of people at large or that on the basis of criminal cases, the detinue had put the entire social apparatus in disorder, making it difficult for whole system to exist as a system governed by rule of law by disturbing public order.

4. Learned AGP for the respondent State supported the detention order passed by the authority and submitted that sufficient material and evidence was found during the course of investigation, which was also supplied to the detinue indicate that detinue is in habit of indulging into the activity as defined under section 2(c) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and detention order deserves to be upheld by this Court.

5. 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 baring on the 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 detinue cannot be said to be germane for the purpose of bringing the detinue 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 detinue is a person within the meaning of section 2(c) of the Act. Except general statements, there is no material on record which shows that the detinue 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 Supreme Court in *Pushker Mukherjee v/s. State of West Bengal [AIR 1970 SC 852]*, where the distinction between 'law and order' and 'public order' has been clearly laid down. The Court observed as follows :

"Does the expression "public order" take in every kind of infraction of order or only some categories thereof ? It is

a 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
b 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
c 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
d 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."

e 6. In view of above, I am inclined to allow this petition,
because simplicitor registration of FIR/s by itself cannot have any
nexus with the breach of maintenance of public order and the
authority cannot have recourse under the Act and no other relevant
and cogent material exists for invoking power under section 3(2) of
f the Act. In the result, the present petition is hereby allowed and the
impugned order of detention No. PCB/DTN/PASA/690/2019 dated
27.6.2019 passed by the respondent - detaining authority is hereby
quashed and set aside. The detenu is ordered to be set at liberty
g forthwith if not required in any other case.

7. Rule is made absolute accordingly. Direct service is permitted.

Result:- Petition allowed.

h