



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.560 OF 2023

Vishal Kanhaiyalal Shrimali
Aged: 35 years,
Occupation: Advocate,
Presently lodged at Sub – Jail,
Dadra and Nagar Haveli,
Having Barrack No. 6,
Residing at: E/702, Thakor Complex,
Near Judges Bungalow, Tokarkhada,
Silvassa, Union Territory of Dadar &
Nagar Haveli and Daman and Diu – 396230.
Mobile No.9974066009.
E-mail ID – adv.vkshrimali@gmail.com

...Petitioner

Versus

1. Union Territory of Daman and Diu
(Through Public Prosecutor)
2. District Collector and Magistrate,
Office of Collector,
Administration of Dadra and Nagar
Haveli, Silvassa.
3. The State of Maharashtra
4. Superintendent of Police
Dadra and Nagar Haveli,
Police headquarter,
Next to Hanuman Mandir,
Zanda Chowk, Vapi,
Silvassa Main Road, Silvassa,
Dadra and Nagar Haveli – 396230

...Respondents

WITH
CRIMINAL WRIT PETITION NO.706 OF 2023

1. Sangeeta Ashoksinh Rathod,
Age – 45 years,
Behind Prithvisinh Hotel, Naroli,
Haveli Faliya, Dadra & Nagar Haveli,
Union Territory of Dadra &
Nagar Haveli and Daman & Diu.
2. Deleted ...Petitioner

Versus

1. Union Territory of Dadra & Nagar Haveli
and Daman & Diu,
Through its Administrator.
2. District Magistrate, Silvassa,
U.T. of Dadra and Nagar Haveli &
Daman & Diu.
3. The State of Maharashtra
4. Superintendent of Police
Dadra & Nagar Haveli,
Silvassa. ...Respondents

WITH
CRIMINAL WRIT PETITION NO.707 OF 2023

1. Sangeeta Ashoksinh Rathod,
Age – 25 years,
Behind Prithvisinh Hotel, Naroli,
Haveli Faliya, Dadra & Nagar Haveli,
Union Territory of Dadra &
Nagar Haveli and Daman & Diu.
2. Deleted ...Petitioner

Versus

1. Union Territory of Dadra & Nagar Haveli
and Daman & Diu,
Through its Administrator.
2. District Magistrate, Silvassa,
U.T. of Dadra and Nagar Haveli &
Daman & Diu.
3. The State of Maharashtra
4. Superintendent of Police
Dadra & Nagar Haveli,
Silvassa.

...Respondents

Mr. Ashok Mishra a/w Mr. Ameet Mehta, Ms. Kinjal Mehta, Mr. Jilesh Sanghavi, Mr. Hrishikesh Naik and Ms. Madhu Ravi i/b M/s. Solicis Lex for the Petitioners in WP/560/2023

Mr. Manoj Badgujar for the Petitioner in WP/706/2023

Mr. Manoj Badgujar a/w Mr. Aniruddh Parmar for the Petitioner in WP/707/2023

Mr. H. S. Venegavkar, Spl. P.P. a/w Mr. Kamar Ali Shaikh for the Respondent-UT

Ms. M. H. Mhatre, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.
TUESDAY, 18th APRIL 2023**

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Since all the aforesaid petitions are to some extent interrelated, they are being disposed of by a common judgment and order.

2 WRIT PETITION NO. 560/2023

2.1 By this petition preferred under Article 226 of the Constitution of India, the petitioner, an advocate, seeks quashing and setting-aside of the impugned order dated 6th December 2022 passed by the District Magistrate, Dadra and Nagar Haveli under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter for the sake of brevity referred to as 'PASA Act').

2.2 The principal ground on which quashing of the impugned order invoking PASA Act is sought, is non-handing of documents, on which reliance was placed by the Detaining Authority, as reflected in the impugned order. Apart from the

said ground, several other grounds were also raised in the petition, however, since the petition ought to succeed on this very ground, it is not necessary to delve into the other grounds raised in the petition.

2.3 Learned Special PP appearing for the respondent Nos. 1, 2 and 4 does not dispute the fact, that no documents were placed before the Detaining Authority, on which reliance was placed and hence, the question of handing the said documents to the petitioner does not arise.

2.4 Perused the papers. The petitioner is a practicing advocate having completed his law from the University of Mumbai. He is enrolled with the Bar Council of Maharashtra and Goa and it is stated that he has been practicing for more than nine years in the field of Civil, Criminal and Revenue related matters. It appears that the petitioner was also appointed as an Assistant Public Prosecutor for the period 21st August 2017 to 20th

May 2020 in the Court of the learned Chief Judicial Magistrate and Judicial Magistrate First Class of Dadra and Nagar Haveli and was a Public Prosecutor for the CGST and the Central Excise Department of the Union Territory of Dadra and Nagar Haveli in November 2018. According to the petitioner, he is a social activist, who has fought for the right of citizens and environment by filing several representations before various authorities from time to time.

2.5 According to the learned counsel for the petitioner, the petitioner had taken cudgels with the marble lobby by exposing their illegalities i.e. how marble was polished and the waste material was lying on fertile land close to the manufacturing units; how fertile lands were becoming barren due to the flourishing business of the marble lobby and its agents supported by the politicians; and how it was difficult for ordinary citizens to raise their voices and concerns against these illegal and anti-social activities.

2.6 According to the petitioner, in one such case, the residue and waste material (of marbles) were dumped near the land of Prithvisinh Rathod and Ashoksinh Rathod (detenues in Writ Petition No. 706/2013 and 707/2013). It is stated that Prithvisinh Rathod (detenue in Writ Petition No. 706/2013) approached the petitioner, pursuant to which, the petitioner advised Prithvisinh Rathod and his father-Ashoksinh to file proceeding under Section 133 of the Criminal Procedure Code, for removal of nuisance. Pursuant thereto, an application was filed on 26th April 2022 under Section 133 before the Sub-Divisional Magistrate at Silvassa. As no steps were taken by the Sub-Divisional Magistrate, Silvassa, the petitioner on behalf of his client Prithvisinh Rathod (detenue in Writ Petition No.706/2023) took all necessary steps i.e. submitted a request to inquire about the progress vide application dated 31st May 2022, 8th July 2022 and 20th October 2022, to the Resident Deputy Collector. However, it is the case of the petitioner, that the petitioner did not receive any reply. According to the petitioner, his client

Prithvisinh Rathod (detenue in Writ Petition No.706/2023) through the petitioner was sending representations to the Chairman, Pollution Control Committee, Union Territory of Dadra and Nagar Haveli and Daman and Diu vide representation dated 31st January 2022 and reminder dated 28th March 2022, bringing to their notice violations of the Rules relating to air and water pollution caused by the marble lobby. It appears that the petitioner, on behalf of his client Prithvisinh Rathod (detenue in Writ Petition No.706/2023), also addressed a letter dated 23rd June 2022 to the Regional Officer, Gujarat Pollution Control Board, Umbergaon, Gujarat and had also sent a representation to the Collector of Valsad District on 23rd June 2022 and a reminder on 8th August 2022. It is the case of the petitioner that despite sending several representations and complaints, none of the authorities took any action or replied to the said representations. Several letters are stated to have been sent to the said authorities, however, to no avail. It is the petitioner's case that at the instance of the marble lobby, several false FIRs came to be registered

against him by the police to the extent that even the petitioner's computer came to be seized. According to the petitioner, out of the eight FIRs, which were registered against him, in seven cases, he was released on bail (except in Criminal No. 634/2022, where petitioner has not been arrested). In most of the CRs, the offences alleged are under Sections 384, 120-B of the IPC.

2.7 It appears that whilst the petitioner was in judicial custody, the Detention Order dated 6th December 2022 was issued to him under Section 3(2) of PASA Act, on various grounds as mentioned therein. As per Section 3(3) of PASA Act, when any order is made under this section by an authorised officer, he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government. According to the petitioner,

he ought to have been informed by the State Government within twelve days that the detention order has been confirmed by the State Government and that the State Government has constituted an Advisory Board under Section 10 of the PASA Act for confirmation of the detention of the detenu by the Advisory Board. According to the petitioner, there is nothing on record to show that the State Government has confirmed the detention order or the matter was referred to any Advisory Board for confirmation of the detention of the petitioner.

2.8 It appears that thereafter, a supplementary representation was tendered to the District Magistrate, Silvassa i.e. the respondent No. 2 vide letter dated 3rd January 2023, stating the summary of the offences registered against the petitioner alongwith the details of bail, in which the petitioner was enlarged by the Courts, in all seven cases, except one (in which the petitioner was yet to be arrested). On bail being granted by various Courts, according to the petitioner, on

complying with the necessary formalities of bail, when he was about to leave the sub-jail, Dadra and Nagar Haveli on 17th January 2023, to his utter shock and surprise, he was asked by the jail authorities not to leave the premises, as the petitioner was detained as per the order dated 6th December 2022 passed by the respondent No. 2. Pursuant thereto, the petitioner was served with an order dated 19th January 2023 issued by the learned District Magistrate i.e. the respondent No. 2 informing the petitioner that he has been detained as per order dated 6th December 2022.

2.9 A perusal of detention order dated 6th December 2022 passed by the respondent No. 2-Bhanu Prabha, District Magistrate, Dadra and Nagar Haveli, shows that it was reported that there were five cases registered against the petitioner, details of which have been mentioned in the said detention order. The detention order (translated) passed by the respondent No. 2 which is at page 285 Exhibit 'F' reads thus :

“WHEREAS, a report has been received that Mr. Vishal Kanhaiyalal Shrimali is a dangerous person who attempts to commit and abets the commission of offence punishable under Chapter XVI and XVII of the Indian Penal Code in the Union Territory of Dadra & Nagar Haveli and Daman & Diu. And his activities are sever threat to public peace, tranquility and law & order;

AND WHEREAS, it has also been reported that Mr. Vishal Kanhaiyalal Shrimali commits / attempt to commits or abets commission of offence under various sections of Indian Penal Code and under Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Crimes Mr. Vishal Kanhaiyalal Shrimali commits are organized crime under conspiracy with other and extorted huge amount of money from persons of various sectors of society Mr. Vishal Kanhaiyalal Shrimali misuses his advocate profession and threatens the victims through legal process of law for extorting money and valuable items. Mr. Vishal Kanhaiyalal Shrimali is active and is a problem for police as well as insecurity to general public at large;

AND WHEREAS, it has been further reported that Mr. Vishal Kanhaiyalal Shrimali along with his associate Mr. Prithvisinh Ashoksinh Rathod and Mr. Ashoksinh Prabhatsinh Rathod formed a gang and is involved in extortion of money from transporters, businessmen, industrialist by threatening them. And they also cheat weaker / illiterate public;

AND WHEREAS, it has also been reported that Mr. Vishal Kanhaiyalal Shrimali has started his criminal activities in a larger way by getting involved in cases of extortion and cheating of huge amount of money from illiterate scheduled

tribes of Naroli Village and also abused them on their caste. And more than 15 persons have jointly submitted a complaint against Mr. Vishal Kanhaiyalal Shrimali;

AND WHEREAS, it has been reported that it is necessary to prevent his anti-social and dangerous activities which are prejudicial to maintenance of public order And unless Mr. Vishal Kanhaiyalal Shrimali is detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 (16 of 1985) (PASA) Mr. Vishal Kanhaiyalal Shrimali will remain a threat to public order and property.

AND WHEREAS, it has been also reported that the following criminal cases has been registered against Mr. Vishal Kanhaiyalal Shrimali;

Sr. No.	FIR No. & Section	Date of Registration	Crime Head	Status of Arrest	Status of Disposal
1.	607 u/s 384, 34, 120(B) IPC	10/11/2022	Extortion	Arrested	Pending Investigation
2.	611/22 u/s 384, 120(B) IPC	11/11/2022	Extortion	Arrested	Pending Investigation
3.	612/22 u/s 384, 120(B) IPC	11/11/2022	Extortion	Arrested	Pending Investigation
4.	621/22 u/s 384, 120(B) IPC	14/11/2022	Extortion	Arrested	Pending Investigation
5.	622/22 u/s 420, 34 IPC r/w Sec. 3(1)	14/11/2022	Cheating and Insulting	Not-arrested (is in	Pending Investigation

	<i>(x) of SC/ST (POA) Act, 1989</i>		<i>persons belonging to scheduled tribe on their caste</i>	<i>police remand in another case)</i>	
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*AND WHEREAS, from the view of above and **upon perusal of the documents on record** it is apparent that Mr. Vishal Kanhaiyalal Shrimali is a dangerous person and a threat to the peace and tranquility of the general public in the District of Dadra & Nagar Haveli. And thus, in the light of above, the undersigned is satisfied that there is a need to maintain public order by controlling such antisocial and illegal activities of Mr. Vishal Kanhaiyalal Shrimali and such elements who can cause danger to the public order must be brought under preventive detention;*

THEREFORE, I, Bhanu Prabha, District Magistrate, Dadra & Nagar Haveli under the powers conferred upon me under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1965 (the Act) as extended to the U.T. of Dadra & Nagar Haveli read along with the order of Department of Home Affairs vide Order No. ADM/DNH/DS(H)/PASA/2019/197 Date 06/02/2019 hereby direct to arrest Mr. Vishal Kanhaiyalal Shrimali and detain him at Sub-Jail, Silvassa, Dadra & Nagar Haveli till further directions as per law. (Emphasis supplied)

2.10 It is pertinent to note that the respondent No. 2 has stated that **“upon perusal of the documents on record”**, however,

admittedly, no documents were placed before the District Magistrate and as such, were not made available to the petitioner. It also appears that the petitioner was released on bail in all the cases, however, admittedly, none of the bail orders nor the bail applications were placed before the respondent No. 2. Thus, what were the documents on which the Detaining Authority came to a conclusion that the petitioner was a dangerous person and a threat to the peace and tranquility of the general public in the District of Dadra and Nagar Haveli is not known. On what basis the Detaining Authority arrived at a subjective satisfaction is not clear.

2.11 A perusal of the impugned detention order shows that the respondent No. 2 has very casually passed the detention order without application of mind and without there being any documents on record to arrive at any subjective satisfaction that the petitioner was a dangerous person and as such, was a threat to

the peace and tranquility of the general public in the District of Dadra and Nagar Haveli. Inference has to be drawn from the material on record. In the absence of such material on record, the mere *ipse dixit* of the Detaining Authority is not sufficient to sustain the order of detention.

2.12 As noted above, even the Special Public Prosecutor does not dispute the fact, that no documents were placed before the Detaining Authority and hence, the question of supplying the same to the appellant does not arise. We find that the detention order is passed against the petitioner by the respondent No. 2 in a very mechanical and cavalier manner and as such, cannot be sustained in law. The case in hand is nothing but an abuse of the law of preventive detention. Hence, we pass the following order.

ORDER

- (i) Petition is allowed;

(ii) The detention order dated 6th December 2022 passed by the District Magistrate, Dadra and Nagar Haveli and the approval order dated 27th January 2023 passed by the Joint Secretary (Home), Dadra and Nagar Haveli and Daman and Diu are hereby quashed and set-aside.

(iii) The petitioner be released forthwith, if not required in any other case.

3 WRIT PETITION NOS. 706/2023 & 707/2023 :

3.1 The detenu in Writ Petition No. 706/2023 is the son of the petitioner and the detenu in Writ Petition No.707/2023 is the husband of the petitioner therein. Thus, the detenues in the said petitions are father and son.

3.2 The detenu in Writ Petition No. 707/2023 is in business of transport and the detenu in Writ Petition No.706/2023 is a student studying law. We are informed that

Prithvisinh Rathod (detenue in Writ Petition No. 706/2013) is in the fourth year of law. According to the petitioner, the detenue being a vigilant student of law, decided to raise his voice against the violators of law when he learnt about the illegalities committed by the marble industry owners (essentially against environmental laws). According to the petitioner, her son (detenue) filed several complaints with Resident Deputy Collector, Silvassa, and other authorities and brought to their notice the illegal acts of the marble lobby. According to the petitioner, as the authorities were shielding the persons belonging to the Marble Industries, despite detailed complaints being filed against them, the petitioner's son filed applications requesting information regarding the status of his applications filed before the authorities. It appears that pursuant to the letters/applications sent by the detenue, the District Collector issued show cause notice to the violators. According to the petitioner, pursuant thereto, several FIRs came to be lodged against her son i.e. detenue in Writ Petition No.760/2023 and her husband i.e.

detenue in Writ Petition No. 707/2023 alleging extortion of monies.

3.3 Be that as it may, the common ground raised in both the aforesaid petitions is that the Detaining Authority had mechanically and in a very casual and cavalier manner passed the detention order, rendering it illegal and bad in law. Several grounds of detention have been raised by the petitioner in both the petitions, however, the petitions ought to succeed on this very ground i.e. non-placement of material before the Detaining Authority and consequently non-supply of material to the detenue. According to the petitioner, non-supply of material upon which the Detaining Authority has placed reliance and only supply of three page order passed by the Detaining Authority, deprived the detenues in both the petitions from making effective representations under Article 21(5) of the Constitution of India. The detention order dated 12th December 2022 in Writ Petition No. 706/2023, which is at page 118 Exhibit `H', reads thus :

“It is to inform that you have been put under preventive detention under Section 3(2) of the Gujarat Prevention of Anti-Social Act, 1965 (the Act) as extended to Dadra & Nagar Haveli. The reasons for your arrest are as following:

It was reported that You are a dangerous person, who attempts to commit and abets the commission of offence punishable under Chapter XVI and XVII of the Indian Penal Code in the Union Territory of Dadra & Nagar Haveli and Daman & Diu. And you activities are severe threat to public peace, tranquility and law & order.

*That You commit/attempt to commit or abet commission of offence under various Sections of Indian Penal Code and under Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Crimes You commit are organized crime under conspiracy with other and have extorted huge amount of money from persons of various sectors of society. **You are studying LL.B. to extort and cheat general public.** And you are active and is a problem for police as well as insecurity to general public at large.*

That You along with your father Mr. Ashoksinh Prabhatsinh Rathod and Adv. Vishal Kanhaiyalal Shrimali r/o. Silvassa have formed a gang and are involved in extortion of money from transports, businessmen, industrialist by threatening them. And you also cheat weaker / illiterate public.

That You have started your criminal activities in a larger way by getting involved in cases of extortion and cheating of huge amount of money from illiterate scheduled

tribes of Naroli Village and also abused them on their caste. And more than 15 persons have jointly submitted a complaint against You.

That it is necessary to prevent your anti-social and dangerous activities which are prejudicial to maintenance of public order And unless You are detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 (16 of 1985) (PASA) You will remain a threat to public order and property.

That the following criminal cases has been registered against You:

<i>Sr. No.</i>	<i>FIR No. & Section</i>	<i>Date of Registration</i>	<i>Crime Head</i>	<i>Status of Arrest</i>	<i>Status of Disposal</i>
1.	85/17 u/s. 447, 323, 504, 506, 34 IPC	31/05/201	Trespass, Assault	Arrested	Pending Trial
2.	607 u/s 384, 34, 120(B) IPC	10/11/2022	Extortion	Arrested	Pending Investigation
3.	611/22 u/s 384, 120(B) IPC	11/11/2022	Extortion	Arrested	Pending Investigation
4.	612/22 u/s 384, 120(B) IPC	11/11/2022	Extortion	Arrested	Pending Investigation
5.	621/22 u/s 384, 120(B) IPC	14/11/2022	Extortion	Arrested	Pending Investigation

6.	622/22 u/s 420, 34 IPC r/w Sec. 3(1) (x) of SC/ST (POA) Act, 1989.	14/11/2022	Cheating and insulting persons belonging to scheduled tribe on their caste.	Not-arrested (is in police remand in another case)	Pending Investigation
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*Thus from the view of above and **upon perusal of the documents on record** it is apparent that You are a dangerous person and a threat to the peace and tranquility of the general public in the District of Dadra & Nagar Haveli. And thus, in the light of above, the undersigned is satisfied that there is a need to maintain public order by controlling such antisocial and illegal activities of you and such elements who can cause danger to the public order must be brought under preventive detention.*

Now, since you have been informed about the reasons of arrest under Section 9(1) of the Act, you have a right to defend yourself and if you want to submit anything, you can inform through the Superintendent Sub-Jail, D & NH, within 12 days of your arrest to below mentioned address:

- 1) District Magistrate, Collectorate, Dadra & Nagar Haveli, Silvassa;
- 2) Home Department, Secretariat, Daman;
- 3) PASA Advisory Board, Secretariat, Daman.

If the Government approves your arrest order, the Advisory Board will deliberate in limited time period. You will be informed through the Superintendent Sub-Jail, D & NH, about the time and place decided by the Advisory Board. You can produce documentary evidence, if any.”

(Emphasis supplied)

3.4 The detention order dated 12th December 2022 in Writ Petition No. 707/2023, which is at page 118 Exhibit `H`, reads thus :

“It is to inform that you have been put under preventive detention under Section 3(2) of the Gujarat Prevention of Anti-Social Act, 1965 (the Act) as extended to Dadra & Nagar Haveli. The reasons for your arrest are as following:

It was reported that You are a dangerous person, who attempts to commit and abets the commission of offence punishable under Chapter XVI and XVII of the Indian Penal Code in the Union Territory of Dadra & Nagar Haveli and Daman & Diu. And you activities are severe threat to public peace, tranquility and law & order.

That You commit/attempt to commit or abet commission of offence under various Sections of Indian Penal Code and under Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Crimes You commit are organized crime under conspiracy with other and have extorted huge amount of money from persons of

various sectors of society. You are studying LL.B. to extort and cheat general public. And you are active and is a problem for police as well as insecurity to general public at large.

That You along with your father Mr. Ashoksinh Prabhatsinh Rathod and Adv. Vishal Kanhaiyalal Shrimali r/o. Silvassa have formed a gang and are involved in extortion of money from transports, businessmen, industrialist by threatening them. And you also cheat weaker / illiterate public.

That You have started your criminal activities in a larger way by getting involved in cases of extortion and cheating of huge amount of money from illiterate scheduled tribes of Naroli Village and also abused them on their caste. And more than 15 persons have jointly submitted a complaint against You.

That it is necessary to prevent your anti-social and dangerous activities which are prejudicial to maintenance of public order And unless You are detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 (16 of 1985) (PASA) You will remain a threat to public order and property.

That the following criminal cases has been registered against You:

<i>Sr. No.</i>	<i>FIR No. & Section</i>	<i>Date of Registration</i>	<i>Crime Head</i>	<i>Status of Arrest</i>	<i>Status of Disposal</i>
1.	85/17 u/s.	31/05/201	Trespass,	Arrested	Pending Trial

	447, 323, 504, 506, 34 IPC		Assault		
2.	607 u/s 384, 34, 120(B) IPC	10/11/2022	Extortion	Arrested	Pending Investigation
3.	611/22 u/s 384, 120(B) IPC	11/11/2022	Extortion	Arrested	Pending Investigation
4.	612/22 u/s 384, 120(B) IPC	11/11/2022	Extortion	Arrested	Pending Investigation
5.	621/22 u/s 384, 120(B) IPC	14/11/2022	Extortion	Arrested	Pending Investigation
6.	622/22 u/s 420, 34 IPC r/w Sec. 3(1) (x) of SC/ST (POA) Act, 1989.	14/11/2022	Cheating and insulting persons belonging to scheduled tribe on their caste.	Not- arrested (is in police remand in another case)	Pending Investigation

*That the following action has been taken
against You as a preventive measure.*

Sr. No.	Chapter Case No. & Section	Date of Registration
1.	70/14 u/s 107, 151 of Cr.PC	15/06/2014
2.	251/19 u/s 107, 151 of Cr.PC	18/03/2019
3.	353/20 u/s 107, 151 of Cr.PC	16/10/2020

Thus from the view of above and upon perusal

of the documents on record it is apparent that You are a dangerous person and a threat to the peace and tranquility of the general public in the District of Dadra & Nagar Haveli. And thus, in the light of above, the undersigned is satisfied that there is a need to maintain public order by controlling such antisocial and illegal activities of you and such elements who can cause danger to the public order must be brought under preventive detention.

Now, since you have been informed about the reasons of arrest under Section 9(1) of the Act, you have a right to defend yourself and if you want to submit anything, you can inform through the Superintendent Sub-Jail, D & NH, within 12 days of your arrest to below mentioned address:

- 1) District Magistrate, Collectorate, Dadra & Nagar Haveli, Silvassa;*
- 2) Home Department, Secretariat, Daman;*
- 3) PASA Advisory Board, Secretariat, Daman.*

*If the Government approves your arrest order, the Advisory Board will deliberate in limited time period. You will be informed through the Superintendent Sub-Jail, D & NH, about the time and place decided by the Advisory Board. You can produce documentary evidence, if any.”
(Emphasis supplied)*

3.5 Admittedly none of the FIRs pertaining to the detenués in both the petitions were placed before the Detaining

Authority. The said fact is not disputed. Admittedly, no material/documents were placed before the Detaining Authority and as such, except the three page order, nothing was furnished to the detenues. Infact, despite observing that **"upon perusal of the documents on record"**, learned Special Public Prosecutor was unable to produce before us a single document on which the Detaining Authority had placed reliance. He fairly states that there were no documents placed before the Detaining Authority.

3.6 It is pertinent to note that preventive detention is an anticipatory measure and does not relate to an offence, whereas, criminal proceedings are initiated to punish a person for an offence committed by the offender. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted only when the executive is convinced on the basis of the material available and placed before it that detention is warranted to prevent the detenue (person detained) from acting in a manner prejudicial to

acts as specified in the Act. Thus, there is a discretion vested with the Executive Authority which has to be exercised in accordance with law. Under the detention law, a person's greatest of human freedoms i.e. personal liberty is deprived and hence, it is imperative that the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical, is mandatory.

3.7 Having regard to the aforesaid, the detention orders clearly stand vitiated. The detention orders vis-a-vis the detenues in both the aforesaid petitions have been passed by the respondent No. 2 in a very casual and cavalier manner and reflect complete non- application of mind. In the facts, the subjective satisfaction arrived at by the Detaining Authority clearly stands violated, rendering the detention orders, illegal. It reflects complete non-application of mind in arriving at the satisfaction that the detenues were dangerous persons. As noted above, detention of a detinue is a serious matter, as the Supreme Court,

in the case of *Union of India vs. Paul Manickam & Anr. (Supra)*

has observed in paras 8 to 11, as under :

“8. It has been said that the history of liberty has largely been the history of observance of procedural safeguards. The procedural sinews strengthening the substance of the right to move the Court against executive invasion of personal liberty and the due dispatch of judicial business touching violations of this great right is stressed in the words of Lord Denning as follows:

"Whenever one of the King's Judges takes his seat, there is one application which by long tradition has priority over all other, Counsel has but to say: My Lord, I have an application which concerns the liberty of the subject and forthwith the Judge will put all other matter aside and hear it. It may be an application for a writ of habeas corpus, or an application for bail but whatever form it takes, it is heard first." (Freedom under the Law, Hamlyn Lectures, 1949).

9. The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of States' security, public order, disruption of national economic discipline etc. being envisaged as a necessary evil to be administered under strict constitutional restrictions. In Smt. Ichhu Devi v. Union of India-(1980) 4 SCC 531, this judicial commitment was highlighted in the following words:

"The Court has always regarded personal liberty as the most precious possession of mankind and

refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade"

"This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measure, the Court has not hesitated to strike down the order of detention....."

10. *In Vijay Narain Singh v. State of Bihar , Justice Chinnappa Reddy in his concurring majority view said:*

"...I do not agree with the view that those who are responsible for the national security or for the maintenance of public order must be the sole Judges of what the national security or public requires. It is too perilous a proposition. Our Constitution does not give as carte blanche to any organ of the State to be the sole arbiter in such matters."

"There are two sentinels, one at either end. The legislature is required to mark the law circumscribing the limits within which persons may be preventively detained and providing for safeguards prescribed by the Constitution and the Courts are required to examine, when demanded, whether there has been any excessive detention, that is whether the limits set by the Constitution and the legislature have been transgressed. (SCC p. 19, para 1)".

11. *In Hem Lall Bhandari v. State of Sikkim-(1987) 2 SCC 9 (AIR at p. 766), it was observed: (SCC p. 14, para 12)*

"It is not permissible in matters relating to the personal liberty and freedom of a citizen to take either a liberal or a generous view of the lapses on the part of the officers.....".

3.8 In the light of what is stated above, an inference becomes inevitable that the detention orders authorising detention of the detenues, is passed *sans* any material, which is shocking, to say the least, and as such, the detention orders cannot be sustained in law. Hence, we pass the following order :

ORDER

- (i) Petitions are allowed;

- (ii) Both the detention orders dated 12th December 2022 passed by the District Magistrate, Silvassa, Union Territory of Dadra and Nagar Haveli and Daman and Diu detaining the detenues-Prithvisinh Ashoksinh Rathod and Ashoksinh Prabhatsinh Rathod, are quashed and set-aside.

(iii) The detenues be released forthwith, unless required in any other case.

4 After the operative orders were pronounced, learned counsel for the petitioners in each of the petition, prayed that the petitioners be awarded costs, considering the manner in which the detention orders have been passed and for the petitioner's illegal detention. It is submitted that the detention orders smacks of malafides rendering it liable to be set-aside. They submit that despite several judgments holding that the detention law entails serious consequences, the Detaining Authority overlooked the said legal position and passed the detection orders, clearly without application of mind, in a casual and cavalier manner. Learned counsel for the petitioners relied on the judgment of the Supreme Court in the case of *Prof. S. Seshaiiah vs. State of Andhra Pradesh & Anr.*¹ and prayed for awarding cost to the petitioners for the illegal detention, having regard to the manner in which the detention orders have been passed. It is submitted by the

1 1994 APLJ (Cr.) 49

learned counsel appearing for the petitioners, that despite judgments passed by this Court, such orders are being passed by the District Magistrate, Dadra and Nagar Haveli, Silvassa. In this context, reliance was placed on one of the judgment and order passed by this Court (Coram : S. S. Shinde and N. J. Jamadar, JJ.) in Criminal Writ Petition No. 534/2021 (Anirudh Indrajitsingh Parmar v. District Magistrate, Dadra and Nagar Haveli, Silvassa & Ors.).

5 The facts in this case are peculiar. The manner in which the detention orders have been passed are extremely casual, passed in a cavalier manner with complete non-application of mind by the Detaining Authority.

6 John E.E.D. in `Essays on Freedom and Power' has said,

“Liberty is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization. It is the very quintessence of civilized existence and essential requirement of a modern man.”

7 Ambrose Bierce said that Liberty is one of imagination's most precious possessions and Edmund Burke said, 'whenever a separation is made between liberty and justice, neither, in my opinion, is safe.' Our courts have always regarded personal liberty as the most precious possession of mankind and have shown no tolerance to illegal detention. Where personal liberty is concerned, it is not permissible to take a generous view of the lapses and condone the same. In cases of preventive detention, strict adherence/observance of procedural safeguards is mandated, so that liberty of a person is not compromised by arbitrary exercise of power. The Apex Court in ***Sushanta Kumar Banik vs. State of Tripura and Ors.***², has in para 29 observed as under :

“29. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such

2 2022 SCC OnLine SC 1333

detention provide assume utmost importance and must be strictly adhered to.”

8 In the facts, we find that detention orders have been passed without adverting to any material/record and though stated, there being ‘no material on record’ **for perusal**. In the facts, there has been infraction of Article 21 of the Constitution of India. Learned counsel for the petitioners submitted that the Apex Court in *D. K. Basu vs. State of West Bengal*³ has made it very clear that whenever there is infringement of the indefeasible rights guaranteed under Article 21 of the Constitution of India, this Court has the power and jurisdiction under Article 226 of the Constitution of India to impose costs/award compensation and to protect the fundamental rights of the citizens. In the facts, the detenu, a law intern, his father and their Advocate, have been slapped with detention orders. The Detaining Authority has gone to the extent of stating in its detention order that the detenu in Criminal Writ Petition No. 706/2023 **‘is studying law with the intent to cheat people’**, something, completely preposterous.

3 (1997) 1 SCC 416

With great power comes great responsibility. Thus, greater the power, greater the responsibility. Whilst authorizing detention, it is the bounden duty of the authority to act responsibly and with circumspection and in accordance with law, since under the detention law, a person is deprived of his/her personal liberty. We find that the detention orders have been passed mechanically and casually, contrary to law. The detenues on the basis of the detention orders were in custody since 10th November 2022. The delay in hearing the petitions were because the papers had to be translated from Gujrati to English. The detenues were required to remain in custody pursuant to the detention orders, in the absence of any material being produced before the Authority. It is nothing but travesty of justice.

9 Considering the peculiar facts of this case, we, therefore, deem it appropriate to direct the first respondent to pay a sum of Rs. 20,000/- as costs to each of the detinue. The said costs to be paid within four weeks from the date of

uploading of this judgment. Having regard to the observations made by us, we trust and hope, that the first respondent will take steps to conduct workshop for the officers dealing with detention laws.

10 Petitions are accordingly allowed and disposed of on the aforesaid terms.

11 Matters be listed for compliance on **14th July 2023.**

12 All concerned to act on the authenticated copy of this judgment.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.