

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1911 of 2021**

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ROHITBHAI LAXMANBHAI LUNI

Versus

COMMISSIONER OF POLICE, SURAT & ORS.

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Appearance :

MR SHAKEEL A QURESHI, ADVOCATE for the Petitioner

MR NIKUNJ KANARA, AGP for the Respondents

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CORAM: HONOURABLE MR. JUSTICE PARESH UPADHYAY

Date : 01/04/2021

ORAL ORDER

1. The petitioner apprehends his detention under PASA in connection with the solitary offence being C.R.No.11210003201145 of 2020 registered with the Adajan Police Station, Surat City for the offences punishable under Sections 365, 386, 323, 504, 114 and 506(2) of the Indian Penal Code.

2. In response to the notice of this Court, it was indicated on behalf of the sponsoring Authority that there is proposal to detain the petitioner under PASA, as noted in the order dated 09.03.2021.

3.1 Mr. Shakeel Kureshi, learned advocate for the petitioner has submitted that the dispute is private in nature and under

no circumstances, it can be brought within the definition of a dangerous person under Section 2(c) of the PASA.

3.2 Additionally it is submitted that, the petitioner has also filed quashing petition (with consent) being Criminal Misc. Application No.4694 of 2021, which is being considered by the co-ordinate Bench of this Court. It is submitted that the petitioner be protected.

4. On the other hand, Mr. Nikunj Kanara, learned AGP on instructions from the sponsoring Authority – Police Inspector, Adajan Police Station (Surat City) states that, in view of the protection granted by the co-ordinate Bench of this Court in Criminal Misc. Application No.4694 of 2021, at present the proposal is deferred, however had there not been any protection in the application under Section 482 of the CrPC (quashing petition), the sponsoring Authority did intend to send the proposal to detain the petitioner under PASA, qua the offence in question. It is submitted that this petition be dismissed.

5. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under :

5.1 The plain reading of the complaint makes it clear that, it is entirely a private dispute between few individuals, that too in the personal financial transaction.

5.2 The filing of such FIR and the readiness of the police to register the FIR itself is an aspect, which need not be gone into

in this case, however suffice it to hold that it is more an arm-twisting by the complainant with the aid of local police authorities. Such tactics need to be nipped in the bud. Rampant misuse of PASA is noticed by this court. This is one of such examples, where it is the police authorities who take upon such responsibility to settle the financial transaction / disputes between the parties, with the aid / threat of PASA.

5.3 Attention of this Court is also invited to the order dated 24.02.2021 recorded on Special Civil Application No.593 of 2021, wherein a lady was required to remain in jail for about two months, for similar type of allegations. Serious grievance is made qua that petition as well, however since the detention order dated 12.12.2020, which was the subject matter of that petition, is already set aside by this court vide order dated 24.02.2021, the said aspect need not be stretched further.

5.4 Suffice it to hold that even if there is no protection in favour of the petitioner in Criminal Misc. Application No.4694 of 2021, this is certainly not the case where the petitioner could be termed as a dangerous person within the meaning of Section 2(c) of the PASA.

5.5 Since there is no order under PASA, the detaining Authority can not be restrained from passing such order, if inspite of this order, otherwise, he is satisfied to pass such an order. However, the petitioner can also not be left in lurch.

6. In view of above, the following order is passed.

6.1 This petition is allowed with the direction that, the detention order, if any passed against the petitioner, on the basis of the FIR in question, shall not be executed against the petitioner, for a period of one month from the service thereof to the petitioner.

Direct service is permitted.

M.H. DAVE/147

(PARESH UPADHYAY, J)

