IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 595 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.G.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VISAMANBHAI D DHOLA....Petitioner(s)

Versus

STATE OF GUJARAT THROUGH SECRETARY & 1....Respondent(s)

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Appearance:

MR DEEPAK THAKKAR FOR M/S THAKKAR ASSOC., ADVOCATE for the Petitioner(s) No. 1

MS JIRGA JHAVERI, ASST.GOVERNMENT PLEADER for the Respondent(s) No. 1 - 2

RULE SERVED for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE S.G.SHAH**

Date : 07/10/2013

CAV JUDGMENT

1. The petitioner herein has prayed to issue the appropriate writ,

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order or direction, against the State authorities to take appropriate action against the erring officers, including the detaining authority and sponsoring authority for misusing the powers exercised u/s.3(2) Gujarat Prevention of Anti Social Activities Act, 1985 ('PASA Act', for short) claiming that it was in violation of Articles 14, 19 and 21 of the Constitution of India. Petitioner has also prayed to direct the respondent no.1 – State of Gujarat to adequately compensate him for illegal detention vide an order dated 16.12.2007 u/s.3 (2) of the PASA Act by the respondent no. 2 i.e. District Magistrate, Amreli being detaining authority. It is also prayed to direct the respondent no.1 – State to prosecute the respondent no.2 – District Magistrate, Amreli and the sponsoring authority for the offence u/s.499 of the Indian Penal Code for illegally detaining the petitioner under the PASA Act.

2. Brief facts of the petitioner can be summarized as under:-

2.1. The petitioner was arrested as "dangerous persons" under the provisions of PASA Act by respondent no.2 vide an order-dated 16.12.2007. On the same day i.e. on 16.12.2007 he was detained in to Rajpipla Sub-Jail. Petitioner at Annexure-C with petition is said order of detention wherein it is disclosed and alleged that petitioner is not doing any labour work or business in Prempara, Dhari village where he is residing and he is involved in several illegal activities in nearby area and he is creating danger in the area with his associates and involved in anti-social activities and thereby disturbing the public order. It is further alleged in such order that because of high-handedness of the petitioner by outrageous behaviour and bullying, his victims are not coming forward to lodge the complaint against him. It is further stated that by such anti-social activities, petitioner is plundering and usurping – grabbing properties of innocent people and his illegal as well as anti-social activity

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is increasing day by day. It is also alleged that petitioner was eve-teasing women and charging huge amount as interest after giving money on credit to illiterate persons and taking undue advantage of the poor people. It is also stated that petitioner is ill treating common people by giving threats and coercion as well as by cheating innocent people in public so as to create a havoc in the society and thereby held an image of headstrong person in the society.

2.2. It is also stated in such order of detention that petitioner was giving threats to people and, therefore, people did not dare to file complaint against him and thereby courage and area of petitioner's illegal activity has been increased.

2.3. It is also stated in such order of detention with specific reference to one application dated 8.5.2006 referring news item in daily newspaper like 'Sands' and 'Gujarat Samachar' of 6.5.2006 that several people of village Dhari has given a written complaint to CBI Branch, Ahmedabad regarding aforesaid illegal activities by the petitioner. It is also disclosed that pursuant to such letter by public, the District Court, Amreli has directed the Superintendent of Police to take necessary action by letter-dated 19.5.2006.

THE HIGH COURT OF GUJARAT WEB COPY

2.4. With reference to all above allegations, the District Magistrate, Amreli has decided to detain the petitioner under the PASA Act and in such order, two FIRs were disclosed. Both such FIRs were registered with the Dhari police station, one on 5.5.2006 being C.R.No.-I 28 of 2006 and another on 5.6.2007 being C.R.No.I-20 of 2007. However, so far as first FIR for the offences u/ss.392, 323, 506(2) and 114 of the IPC r/w. Section 25(1)(B) of the Arms Act was concerned, though there are allegations that petitioner has beaten the complainant for recovering the loan amount and shown Tamancha to the complainant, practically, only

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N.C. was filed because complainant had confirmed that no such incident had taken place as alleged in the FIR. Whereas in second complaint, the allegations are to the effect that petitioner has beaten the complainant with stick and iron pipe, which resulted into fracture of leg and because of threat to kill the complainant, the FIR was registered u/ss.323, 325, 504, 506(2), 114 of the IPC as well as Section 135 of the Bombay Police Act. In such complaint, petitioner was released by the competent Court on 19.6.2007 and on the date of order of detention, such case was pending before the Court.

2.5. The detention order also disclosed that detaining authority has recorded the secret statements of four persons on 20.11.2007 and 24.11.2007, which also confirms the illegal activities or highhandedness of the petitioner in the Society.

2.6. Against such order of detention dated 16.12.2007, petitioner has on 30.1.2008 submitted his representation to the PASA Advisory Board wherein it was specifically contended by the petitioner that in fact he is a social worker and involved in several public work for the benefit of public at large. He is having a medical store with a valid license to run such medical store. He is having agricultural land and that he is also holding PAN Card and paying income tax regularly. It is also stated that he belongs to a well reputed and educated family and having three sons and one daughter, all of whom are pursuing higher studies like Engineering, M.Sc, MBA etc. and that even the then Chief Minister Mr. Keshubhai Patel as well as Morari Bapu have awarded him letter of credit for his social activities like erecting thirteen check-dams, providing 700 toilets to the needy persons etc. It is also stated that he has given donation of huge amount for social work and started a Blood Storage Centre in the name of his mother. He has also donated for a temple. Thereby petitioner has tried to show his positive side to the PASA Board with a request to

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set-aside the order of detention. It is also stated that he has worked as a Director of Local Marketing Yard, Trustee of Sevadan Trust as well as Yadunandan Charitable and Education Trust.

2.7. Surprisingly, by letter dated 10.7.2006, one Police Sub-Inspector, namely, B. M. Ahir of Dhari police station has conveyed to the District Superintendent of Police, Amreli about the outcome of his inquiry pursuant to letter dated 23.5.2006 by the D.S.P, Amreli, reporting that allegations against the petitioner are ill-founded and has no substance and persons whose names are shown as signatories on letter or complaint dated 8.5.2006 were also not correct, since some of such persons are not available in the village and persons with the same name have categorically stated before the P.S.I. Mr. Ahir that they have not signed any such letter and that letter does not bear correct information regarding character and activity of the petitioner. Suffice it to say that by such report, P.S.I Ahir has categorically conveyed to the District Superintendent of Police, Amreli that on inquiry regarding first complaint by Jaysukhpuri Bhanupuri Gosai, even complainant has deposed before the P.S.I that no such incident has ever taken place and that he has disclosed such fact by filing affidavit at the relevant time before P.S.I. Shri Desai and, therefore, against such FIR, N. C. No.4 of 2006 was filed on 30.5.2006. Though, there is no disclosure about the outcome of second complaint, since it was registered thereafter in the year 2007, the record shows that practically the complaint was also found to be improper.

2.8. Thereby, the sum and substance of the petition is to the effect that though there was no allegation against the petitioner as narrated in the order and though he cannot be defined as ‘dangerous person’ as per the definition of ‘dangerous person’ described under the PASA Act, the detaining authority has, on vague ground and in arbitrary manner with ulterior motive just to harass the petitioner, may be by political pressure,

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passed an order of detention and executed the same and detained the petitioner for no valid reason.

2.9. Therefore, petitioner has explained all such irregularity and illegality by the respondent with his difficulty because of such detention, more particularly his defamation because of detention and prayed to initiate action against the erring officers of respondent, mainly respondent no.2 and to direct the respondent to compensate him adequately.

3. In reply, respondent no.2 has simply stated that he being a detaining authority, has passed the order under the PASA Act in exercising powers confirmed under the Act and that contentions in the petition by the petitioner are not correct. It is contended that while passing the order of detention, he had verified the investigation report and documents submitted to him by Police Inspector, Dhari and, therefore, the Court should not exercise its extra-ordinary jurisdiction under Article 226 since such petition is not tenable at law. In paragraph 10 of such affidavit in reply, the deponent Mr. P. R. Sompura, District Magistrate, Amreli has on 25.6.2010 simply stated that solitary offence has been registered against the petitioner and during the investigation, it is clearly disclosed that the present petition is involved in the said offence and, therefore, after taking into consideration all materials placed before him and after application of mind to the facts and circumstance of the case as well as legal provisions applicable to the facts of the case, he arrived at subjective satisfaction that petitioner is a 'dangerous person' as defined u/s.2(c) of the PASA Act and, therefore, to prevent him from acting in manner prejudicial to the maintenance of public order, he has passed the order of detention and hence the same is legal, valid and proper. In

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general terms, it is stated that the contentions raised and allegations made by the petitioner are not true and correct. Therefore, practically, deponent no.2 has failed to answer all allegations raised by the petitioner on factual aspect that how and why the order of detention was passed against a person when there is no sufficient evidence against him to prove that he is a 'dangerous person' and his activity is resulting into disturbance of public order.

4. However, considering the fact that there are serious allegations against the present respondent no.2, may be in his official capacity as District Magistrate, the respondents have failed to confirm that who was District Magistrate in charge at the relevant time when detention order dated 16.12.2007 was passed. However, such order categorically disclosed the name of District Magistrate, Amreli as D. G. Zalawadiya with his signature on the order of detention dated 16.12.2007, but it seems that Mr. Zalawadiya has not filed any affidavit in reply to deny the allegations of the petitioner. Therefore, when detention order is issued and signed by the District Magistrate Mr. Zalawadiya, then the statement on oath by Mr. P. R. Sompura as District Magistrate in paragraph 5 of his reply that he was detaining authority as Commissioner of Police, Amreli and as such he has passed the order of detention dated 16.12.2007 to detain the petitioner under the provisions of Section 2(c) of the PASA Act by exercising the powers conferred u/s.2(c) of the PASA Act, is nothing but fallacy, arbitrariness and typical bureaucracy even in the judicial matter and more particularly when there are allegations against the State and its functionaries as well as its officers. In such affidavit itself in the title Mr. Sompura has titled himself as District Magistrate, whereas he has stated on oath that he has passed such order as Commissioner of Police, Amreli. As against that, the detention order dated 16.12.2007, which is

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produced on record at Annexure D confirms that said order was confirmed, issued and signed by one Mr. D. G. Zalawadiya as District Magistrate, Amreli.

5. Though one affidavit in reply is filed in the year, 2010, the respondent has in the year, 2012 filed one further affidavit in reply, which is now sworn by one Mr. P. B. Thaker as Additional District Magistrate of Amreli. With such further affidavit of Mr. P. B. Thaker, respondents have annexed certain documents. However, now, Additional District Magistrate, Amreli Mr. P. B. Thaker has come with a story that District Magistrate has passed the order of detention as a detaining authority. Now, for the first time, respondents have tried to explain that why petition should not be entertained and why order of detention against the petitioner was passed at the relevant time. However, it is nothing but the reproduction of story narrated in the detention order dated 16.12.2007, which is recorded herein and, therefore, not repeated. By such affidavit, now, respondents have also tried to explain the procedure followed for issuance of detention order. However, while narrating the story of second complaint and by producing all relevant documents of charge sheet based upon second complaint, now, at least respondents could not hide and seek the affidavit filed before them by the complainant wherein complainant has categorically confirmed on 23.5.2006 that practically there was no incident at all as alleged in the FIR against the present petitioner, but there was some scuffle between some people and thereupon a complaint was registered against the petitioner without considering the factual details. Thereby because of such affidavit, the police have filed N.C., which was accepted. Whereas so far as the second complaint is concerned, the detaining authority has no option, but to produce relevant information before the PASA Board, which has

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in turn revoked the order of detention since PASA Board has come to the conclusion that the subjective satisfaction by the detaining authority was not proper. The petitioner has also disclosed such fact in paragraph 3(e) of his petition. Though the copy of revocation order is not on record, when petitioner has pleaded and disclosed that considering his detailed representation, the Advisory Board did not confirm the detention order and com to the conclusion that there is no sufficient cause for the detention of the petitioner, the order of detention was revoked and the petitioner was released on 2.2.2008; surprisingly, respondents have nowhere dared to answer such factual details and even failed to confirm that Board has revoked the detention order.

6. One more additional affidavit was filed on behalf of the petitioner in the month of October 2012. With such affidavit, now, the respondents have thought it fit to produce on record the original letter - complaint dated 8.5.2006 was forwarded by District Court, Amreli to the office of the District Superintendent of Police, Amreli; based upon which inquiry has been commenced. However the persons whose names are disclosed as signatories of such letter-complaint had given statement to the police that they have not signed it and some of the signatory were even not in existence at all in the village. Therefore on 8.11.2006, the then in charge Superintendent of Police, Amreli has conveyed the District Court, Amreli that there is no substance in the complaint against the petitioner, though there were serious allegations against the petitioner as well as one Devkaran Dhanjibhai Dhola that they have committed murder in the year 1983 and that license of medical store is in some other name and that duplicate drugs are being sold from such store. However, the detaining authority has never bothered to inquire about such allegation and to find out the truth

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before passing the order of detention. Moreover, so far as the possession of deadly, unlicensed weapons are concerned, such complaint specifically confirms that it was being held by brother-in-law of such petitioner, namely, Keshu Paradva, whereas the detaining authority has relied upon such statement as if petitioner is holding unlicensed arms. However, all such documents were already produced on record with affidavit dated 8.10.2012 and, therefore, there was nothing, but duplication of filing another affidavit on 26.12.2012 by Mr. P. B. Thaker, Additional District Magistrate, Amreli with some documents.

7. Thereby, based upon the rival pleadings, the Court has to determine that whether there was any malafide and arbitrariness on the part of the respondents in passing the detention order and thereby detaining the petitioner for about 45 days and if it is so, whether petitioner is entitled to compensation and whether respondent no.1 can be directed to take action against the erring officers.

8. Learned advocate Mr. Deepak Thakkar for the petitioner has practically taken Court to all such factual details of record, which categorically confirms that respondents have not taken care before issuing the order of detention dated 16.12.2007 and thereby detaining the petitioner and keeping him under detention for almost 45 days. Since entire factual details are narrated herein above, it is not reproduced, but it can certainly be recorded that even documentary evidence and record available with the respondents, some of which is produced before this Court, specifically confirms that there is no substance in any of the complaint against the petitioner.

9. For the sake of confirmation and clarity, it can be noted that: -

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9.1. Though the petitioner has disclosed on oath and averred in his petition about his positive activity in the Society and though such activity can be confirmed by the respondents being competent local authority, respondents have not dared to either challenge or to rebut such factual details so as to prove that petitioner has not came with a true story and that order of detention is proper. Thereby, all such factual details, which are in favour of the petitioner, so far as character and positive activities are concerned, are required to be believed.

9.2. The entire episode of detention has been initiated by the respondents based upon one complaint in the name of several persons of Dhari, which is dated 8.5.2006 and which was forwarded to the Superintendent of Police, Amreli by the District Court, Amreli for taking necessary action and to do the needful in the matter. However, by his report dated 8.11.2006, the then In charge Superintendent of Police, Amreli District has categorically conveyed to the District Court, Amreli that no evidence was available to substantiate the allegations in such complaint and some persons, whose names are disclosed in such complaint dated 8.5.2006, could not be found since no such persons were in existence in the village and thereby it is categorically stated that such complaint is by bogus names and, therefore, no action is required to be taken against such complaint.

9.3. Similar report was also forwarded by Police Sub-Inspector of Dhari police to the office of the Superintendent of Police on 10.7.2006 in detail. Based upon such report by P. S. I. of Dhari, Superintendent of Police has conveyed the District Court as above.

9.4. So far as two FIRs referred in the order of detention are concerned,

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the documents produced by the respondent confirms the story by the petitioner that practically one complainant has categorically filed an affidavit that no incident as alleged in the FIR has ever taken place and, therefore, for such FIR, police has filed N.C. Thereby, there is no substance to rely upon such FIR for passing order of detention. So far as second complaint is concerned, where charge sheet was filed though paper of charge sheet are produced on record with copy of injury certificate of the victim, the fact remains that when petitioner has stated on oath that such complaint was also compromised since there was no such incident, respondents have not bothered to disclose the outcome of such complaint so as to prove that complaint was proper and correct and that petitioner was convicted for such complaint.

9.5. Then only issue remains that with reference to statement of secret witnesses recorded by the police before passing the order of detention, since recording of such statement is permitted under PASA Act, copy of such statements are produced on record by respondent at Annexure R-III. If we peruse such statements, one thing categorically emerges that all these witnesses have categorically stated that they have taken some amount as loan from the petitioner and in debt of the petitioner, thereby they have to pay such amount to the petitioner may be with interest as alleged by them. Therefore, if we believe their story, then, even if petitioner has pressed for recovery of such amount, such pressure cannot be termed as highhandedness by a person unless there is specific evidence to that effect. Except that all other allegations are general in nature and in verbatim that petitioner is headstrong person not doing any thing and wondering here and there and harassing the people to recover his amount. However, none of such statement confirms that petitioner has ever entered into any disturbance of public order.

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9.6. However, for our purpose, it is sufficient to note that practically PASA Board being the statutory authority has though it fit to revoke the order of detention of the petitioner and, therefore, when respondent did not come forward with a specific averment with proof and evidence that revocation of detention order was not on merits, but on political grounds, there is no reason to disbelieve the version of the petitioner that detention order was revoked and, therefore, it becomes clear that it was not proper.

10. Consideration of all above observation and conclusion makes it clear that the order of detention dated 16.12.2007, detaining the petitioner as 'dangerous person' under PASA and to continue him in detention for 45 days, was certainly arbitrary and without application of mind and without considering the correct factual details on record. Such negligent bureaucratic approach is reconfirmed on record when respondent did not file any affidavit of detaining officer i.e. the then District Magistrate of District Amreli, namely, Mr. D. G. Zalawadiya and when another District Magistrate of Amreli, namely, Mr. P. R. Sompura files an affidavit on behalf of respondent no.2 as District Magistrate, but states that he has passed the order of detention as he is detaining authority as Commissioner of Police, Amreli, it is certain that Mr. P. R. Sompura is neither Commissioner of Police, Amreli at the relevant point of time and he has not passed the order of detention dated 16.12.2007. Therefore, the record categorically proves that the detention order is not only illegal, but the respondents have not acted in fair and proper manner in passing such order of detention which could not be sustained even by the statutory authority/PASA Board.

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11. Therefore, considering the available record, there is substance in the petition.

12. So far as entitlement of compensation and maintainability of such petition is concerned, the petitioner is relying upon a judgment of **Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra** reported in **AIR 2011 SC 3393, Nilabati Behera Vs. State of Orissa** reported in **(1993)2 SCC 746** and **Bahadursinh Gambhirsinh Parmar Vs. Commissioner of Police** reported in **2010(23) GHJ 431.**

13. As against above factual details, the learned APP Ms. Jirga Jhaveri for the respondents has argued that: -

13.1. The petitioner has not approached the authority before fling such writ, and that such writs can be entertained only after the authority fails to consider the demands or submissions by the litigant.

13.2. The demand in the main petition is not proper inasmuch as the pleading does not confirm any clarity about the demand, it must be clear and, therefore, the petitioner needs to be rejected.

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13.3. The detention order is always based upon consideration of subjective satisfaction and, therefore, in absence of pleading that such order is illegal or without jurisdiction, only because of revocation of order, thereby non-approval of subjective satisfaction by the PASA Board, it cannot be said that such order was passed with malafide intention and in arbitrary manner and, thereby, mere revocation of order of detention dos no entitles the

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petitioner to claim maintenance.

13.4. The detaining authority has considered two FIRs against the petitioner and the complainant entered into compromise with the petitioner only after the order of detention and, therefore, the detention order cannot be vitiated because of such compromise.

13.5. The detaining authority has also relied upon the statements of secret persons and injury to the victim. Thereby, there is no misuse of powers in considering the petitioner as 'dangerous person'.

13.6. The remedy for compensation lies before the Civil Court under Law of Torts where the evidence is required to be produced and all such action can be taken only after making a demand from the competent authority and after serving a statutory notice.

13.7. Thereby, it is submitted by the respondent that the petition may be dismissed for all such submission. Respondent is relying upon the case of **Rajasthan State Industrial Development and Investment Corporation Vs. Diamond & Gem Development Corporation Ltd.** reported in **(2013)7 SCC 470.**

14. Based upon above submissions and factual details, petitioner has claimed compensation stating that the detention has harmed the reputation of the petitioner since the fact of the detention of the petitioner was given publicity by the newspaper, which tarnished the image of the petitioner and that such illegal exercise of the power by the detaining authority against the petitioner is

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defamatory and constitutes offence u/s.499 of the IPC and thereby his reputation has been directly harmed in the estimation of others and has lowered the morale and intellectual character of the petitioner in the Society and he was considered by people as disgraceful person. It is further stated that the detaining authority did not consider material produced by the petitioner with regard to his credentials for the social services rendered by him to the Society though he had appraised the detaining authority before the passing of detention order. However, the same material was considered by the Advisory Board, which was satisfied that the petitioner is not a dangerous person. Therefore, it is submitted that there was no material before the detaining authority for reaching to a subjective satisfaction so as to detain the petitioner under PASA Act. Therefore, petitioner has prayed for compensation from respondents and also to direct the respondents to take action against the erring officers.

15. Considering all the submissions and available material on record, it transpires that there is substance in the submission by the petitioner that order of his detention was not proper and detaining authority has misused their discretion regarding subjective satisfaction, so as to determine that petitioner can be detained under the PASA Act. It is clear that respondents have failed to appreciate the provision of PASA Act and more particularly definition of 'dangerous person', as defined u/s.2(c) of the PASA Act, which categorically confirms that person can be termed as 'dangerous person' if he habitually commits particular offences. It is also clear that in such offence, based upon which order of detention was passed against the petitioner, was not affecting the

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maintenance of public order in any manner inasmuch as those offences, even if they are committed by the petitioner, were with reference to some particular person only and for particular reason, thereby not for a general reason so as to disturb the maintenance of public order, as regular gangster or hardcore criminal or a headstrong person creating havoc in the area by demanding extortion or indulging himself in any such activity. It is also clear that in absence of any activity, which may be prejudice the maintenance of public order, the person cannot be detained under PASA. The competent authority has also failed to consider the fact that such legal position has been confirmed in numerous cases by all statutory and constitutional authorities like PASA Board, High Court as well as Hon'ble the Apex Court. Therefore, practically, it was the duty of the concerned officer, who issues the order of detention to verify and see that their order of detention is otherwise not resulting into a malicious action because of their activities, which is otherwise not approved under the law. For such reasons, even arriving of subjective satisfaction may be different from person to person, such discretion cannot be utilised arbitrarily and mechanically without scrutinizing and evaluating available information and material. If any officer fails to consider such aspect and to refer relevant previous decisions by the competent Court, it can certainly be said that it is nothing, but a selective step on the part of the detaining authority so as to pass an order of detention and thereby to detain someone for a long period for no valid reason.

16. It is not disputed that petitioner was able to show to the competent authority through his representation that he is not a criminal less a

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habitual offender, so as to define him as ‘dangerous person’ and to pass order of detention. Therefore, even after such factual details before the detaining authority, if the detaining authority passes an order of detention as aforesaid, and keeps such person behind the prison for 45 days without any reason whatsoever, then, such officer as well as office and authority are responsible and liable for passing such improper order. Once it is proved on record and once petitioner is able to show that order of his detention was not proper, and more particularly when the PASA Board did not confirm such order of detention, then, in that case, petitioner would certainly claim that order of detention was malicious and, thereby, he may certainly claim compensation. When such order is not confirmed by the statutory authority or quashed by the Court, it is for the detaining authority to prove that non-confirmation or quashing of the order was not on merits of the order but on some other ground, so as to get relieved from liability regarding malicious act. Therefore, once it is clear on record that act of respondent – statutory competent authority was improper in confirming and executing the order of detention, practically, now, it is for the detaining authority to plead and prove that there was no malice. If the detaining authority fails to prove and plead that though detention order was either not confirmed or quashed, proper care was taken before passing such order and there was clear material before it for arriving at such subjective satisfaction for issuance of detention order. Therefore, in absence of evidence against the petitioner so as to consider him dangerous person as defined under and/or the PASA and in view of categorical observation revealed upon aforesaid allegations by the petitioner, it is clear and certain that the order of detention of the petitioner

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by the respondent was illegal, improper and thereby it can be said that the same was issued and executed with some other ulterior motive so as to harass the petitioner and, therefore, petitioner entitled to claim compensation.

17. Therefore, considering the overall circumstances and evidence on record, I came to be conclusion that respondent no.2 has exceeded his powers and jurisdiction in issuing order of detention and execution of such order was malicious, since it has been proved on record that the letter dated 8.5.2006, based upon which entire episode has been initiated was practically fake letter i.e. there was no persons in the village whose names are disclosed as applicants and some of the applicants have categorically denied before the police during investigation that they have never addressed such letter it does not bear their signature. Thereafter, the glaring fact is in the form of report by the local police authority to the Superintendent of Police that there is no substance in such compliant and no actions are required to be taken against the petitioner. Therefore, even after such specific evidence on record, if proposing authority and/or detaining authority take a decision to detain a person, solely based upon one or two FIR, it can certainly be concluded that decision regarding detention is not only against the settled principles of law, but certainly for some other reasons. When because of such order, petitioner is detained, though one complaint has been resulted into N.C. in absence of any evidence against the petitioner and when complainant has categorically confirmed that no such incident has ever taken place, it is proved on record that order of detention was not only illegal, but certainly with some extraneous consideration. In view of such facts and

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circumstances, I am of the clear opinion that there must be some strict action against the erring officers and that the petitioner is entitled to compensation for his harassment, inconvenience, defamation etc. because of such illegal and unwarranted detention.

18. So far as entitlement of compensation and proceeding for compensation is concerned, in addition to discussion of judgments herein, it cannot be ignored that Law of Torts and law regarding compensation is not an enacted statute, but it is a Court made law. Thereby, practically, question of tortuous activity and compensation are always being dealt with by the Courts based upon common principle of law that no one should injure any other person in any manner and if someone is injured because of fault, mistake, negligence or with intentional malicious action of somebody else, then such injured person shall be compensated suitably from such person, who has resulted such injury to the victim. Therefore, except for the statute, which provides specific procedure for claiming compensation in certain cases like Motor Vehicle Act or to some extent Land Acquisition Act, Employees' Compensation Act etc., wherein practically procedure for claiming compensation is described, in all other cases, wherever there is tortuous act, the victim is entitled to claim compensation and if specific procedure is not prescribed in any statute, then, in general, victim can certainly claim compensation from the same authority where he can complain or initiate any legal action against such tortuous act. No doubt that the common principle of law suggests that any such action should be initiated at the lowest authority, I am of the opinion that unless there is a necessity of adducing particular evidence and unless technical issues are to be

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proved while claiming compensation, the competent Court which is able to decide the legality of the act in question, herein this case, issuance and execution of order of detention, can determine all other ancillary issues like compensation, while deciding the legality of such act, so as to avoid multiplicity of proceedings. It is well settled position that otherwise also, High Court and the Supreme Court being the constitutional authorities are having inherent and extra-ordinary jurisdiction to pass appropriate orders considering the facts and circumstances of each case.

19. My above view is substantiated from following decisions of the Apex Court: -

19.1. Long back in the year 1983, the Bench of Three Judges of the Apex Court has in the case of **Rudul Sah Vs. State of Bihar** reported in **(1983)4 SCC 141** observed and held that compensation for illegal detention can be granted in Article 32 while keeping the right of the victim open for filing suit for damages i.e. without affecting victim's right to sue for damages, compensation can be granted in writ jurisdiction. It is further held that if proper affidavit furnishing satisfactory explanation is not filed on behalf of the State, a petition for writ of habeas corpus can be allowed with a direction to the State to pay compensation to the petitioner. It is also clarified that senior officer of the State should file affidavit and complete information supported by relevant data should be furnished and furnishing vague explanation would result into inference against the authority. It is specifically held that though constitutional power cannot be exercised as a substitute for the enforcement of rights and applications which can be enforced efficaciously through the ordinary processes of Courts, such as money

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claims, the Court in exercise of its jurisdiction under constitution can pass an order for the payment of compensation if such an order is in the nature of compensation consequential upon a deprivation of a fundamental right. In this case, the Court has awarded compensation of Rs.35000/- because of prolonged detention of the person, which was wholly unjustified and illegal, observing that there can be no doubt that if petitioner files a suit to recover damages for his illegal detention, a decree of damages would have to be passed in that suit, though it is not possible to predict that in absence of evidence, a precise amount could not be decreed in his favour. It is further stated that refusal to pass an order of compensation in favour of the petitioner will be doing mere lip service to fundamental right.

Said judgment has been relied upon in several cases and it was neither distinguished nor overruled or even doubted for last three decades and, therefore, there is no reason to discard such legal position.

19.2. In **Nilabati Behera Vs. State of Orissa** reported in **(1993) 2 SCC 746** the above principle has been reconfirmed by the Bench of three Judges of the Apex Court in more detail relying upon several citations including the principle of law from the Law of Torts. It is sufficient to recall paragraph 10 to 17 which are relevant for our purpose and are relied upon for arriving at appropriate conclusion and determination.

19.3. In **T. C. Pathak Vs. State of U. P. & Ors.** reported in **(1995)5 SCC 700,** the Apex Court has confirmed the award of compensation to the tune of Rs.20000/- for illegal detention.

19.4. The case of **Jaywant P. Sankpal v. SumanGholap & amp &**

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Ors. reported in **(2010) 11 SCC 208** is a glaring example wherein though victim was termed as habitual offender, having several FIRs against him and though he was detained under PASA Act in previous occasions, for illegal detention and PASA Act in last case, where probably victim Baban was not involved at all, the Apex Court has confirmed the award of Rs.45000/- as compensation for illegal detention which was initially awarded by the State Human Right Commission and confirmed by the High Court.

19.5. In **Hardeep Singh Vs. State of M.P.** reported in **(2012)1 SCC 748,** the Apex Court has enhanced the compensation of Rs.70,000/- awarded by the Division Bench of the High Court to Rs.2,00,000/- to the tuition teacher only because he was handcuffed without justification, considering that it had not only adversely affected his dignity as a human being, but had also led to unfortunate and tragic consequence, though his liberty was not affected, inasmuch as he was not in imprisonment, but on bail.

19.6. In **Mehmood Nayyar Azam Vs. State of Chhattisgarh** reported in **(2012)8 SCC 1,** considering the right of under trials and detenu to claim compensation when their dignity and reputation has been affected, after discussing the issue on length and after referring several judgments, the Apex Court has awarded a sum of Rs.5,00,000/- with a direction that such amount be realized from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State. Compensation was awarded considering that victim had undergone mental torture in the hands of insensible police officers. The Apex Court has considered the term harassment in detail while awarding such amount of compensation. The Apex Court has also reproduced several paragraphs

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of the previous cases viz. Nilabati Behera (supra) and Hardeep Singh (supra).

19.7. **Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra** reported in **(2012) 9 SCC 791**, though the amount of compensation awarded is only Rs.2,00,000/-, reference to such judgment is necessary because – (1) it is recent judgment and (2) in such reported case, the Apex Court has practically referred all previous judgments in paragraphs 18 to 22 and reproduced relevant paragraph of previous judgments which are equally material and important for the present.

19.8. In **Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy** reported in **AIR 2012 SC 100,** the Apex Court has dealt with the subject in much detail and considered the different aspect on the issue of payment of compensation as well as measure of damages. The relevant observations are in paragraphs 37 and 47 to 62. Since reproduction of paragraphs from previous judgments is avoided, the sum and substance of all above judgments of the Apex Court categorically confirms not only the entitlement of the victim, but jurisdiction of the Court to grant compensation without asking the victim to approach the Civil Court for claiming compensation, as submitted and argued by the learned AGP.

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20. Therefore, now it becomes clear that when detention order was illegal and when it was passed with some other motive, and when there is lack of sufficient evidence before the respondents so as to arrive at subjective satisfaction to detain the petitioner, the petitioner is right in complaining that the detention order dated 16.12.2007 was passed ignoring report by the local police which

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has categorically confirm that there is no case against the petitioner. Thereby there was no material on record before the detaining authority for reaching to a subjective satisfaction and to term or define petitioner as a 'dangerous person' as defined u/s.2(c) of the PASA Act. Petitioner is also right in complaining that, therefore, his detention and imputation of charges set out in the grounds of detention has harmed his reputation when the order of detention was given the publicity by newspapers and thereby action of the respondent has tarnished the image of the petitioner. Hence, petitioner is also right in submitting that such illegal exercise of powers by the detaining authority against the petitioner is defamatory and constitutes an offence u/s.499 of the IPC. Thereby it is clear that on account of illegal detention of petitioner under PASA Act, his reputation and estimation has lowered in the society, which affects the mental and intellectual character. He is considered as disgraceful person and, therefore, for such defamation, he is entitled to compensation. There is also substance in the say of the petitioner that if respondents have taken care to the credential for social service rendered by him, which was otherwise not considered at all, before passing the detention order, the detaining authority would have not passed such order and, therefore, the detaining authority has acted with malice and only with a purpose to detain the petitioner, irrespective of factual details, for some specific purpose, which is nothing but harassment and it can never be said to be done in good faith. Therefore, I hold that respondents have misused their powers under the PASA for illegal detention and hence the petitioner is entitled to compensation. So far as taking action against officers of respondents are concerned, in absence of specific allegations

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against particular officer that issue can be left for the respondent no.1 to take appropriate steps in their administrative capacity.

21. So far as quantum of compensation that may be awarded to the petitioner is concerned, without repeating the factual details and citations, it can be recollected that because of illegal detention for 45 days, the petitioner has been certainly defamed and his reputation has been at stake. However there cannot be a mathematical calculation for such damages when petitioner has also not claimed compensation with actual mathematics like loss of earnings during the period of detention, but it is claimed in general terms to award adequate compensation. Considering the overall circumstances and more particularly discussion in paragraphs 23 and 34 to 36 in the case Nilabati Behera (Supra) as well as decision in case of Association of Victims of Uphaar Tragedy (supra), it would be appropriate to award Rs.1,50,000/- (One hundred fifty thousands only) to the petitioner.

22. Thereby, keeping regards to the various aspects, which has been analysed, and taking note of the totality of the facts and circumstances, sum of Rs.1,50,000/- (One hundred fifty thousands only) is granted towards compensation to the petitioner. The said amount shall be paid by respondent no.1 – State within a period of eight weeks. The State may recover such amount from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State.

23. Thereby, the petition is allowed to the extent stated above. Rule is made absolute to that extent.

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(S.G.SHAH, J.)

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FURTHER ORDER

After pronouncement of judgment, Ld. AGP Ms. Jirga Jhaveri states that State may challenge this order / judgment before the appropriate forum and therefore such order is required to be stayed for couple of months. Whereas, Mr. Deepak Thakkar, learned advocate for the petitioner makes a statement that they will not press for execution of such order for six weeks. Considering the fact that practically there is no direction in the judgment to execute the operative order in prescribed time period, there is no need to stay the operation of this order. However, considering the fact that petitioner has agreed not to execute such order for reasonable time, it would be appropriate for petitioner not to execute such order for ***eight weeks*** from ***today***.

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THE HIGH COURT
OF GUJARAT
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(S.G.SHAH, J.)

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