(2025) 12 GUJ CK 0011

Gujarat High Court

Case No: R/Special Criminal Application No. 15488 Of 2025

Pargatsingh @ Pagga Ajayabsingh Bharat (Sardar)		APPELLANT
	Vs	
State Of Gujarat & Ors		RESPONDENT

Date of Decision: Dec. 11, 2025

Acts Referred:

- Constitution Of India, 1950-Article 21, 22(3)(B)
- Gujarat Prevention Of Anti-Social Activities Act, 1985-Section 2(F), 3,
- Narcotic Drugs And Psychotropic Substances Act, 1985-Section 8, 8(C), 22, 22(B), 25, 29
- Drugs And Cosmetics Act, 1940-Section 10, 18, 33D, 33E

Hon'ble Judges: N.S.Sanjay Gowda, J; D. M. Vyas, J

Bench: Division Bench

Advocate: Vedant D Gaikwad, Pranav Dhagat

Final Decision: Allowed

Judgement

D. M. Vyas, J

1. The present petition is filed by Paragsingh alias Pagga Ajayabsingh Bharat (Sardar) came to be preventively detained vide the detention order dated 11.11.2025 (Actual date of detention is 13.11.2025) passed by the Director General of Police, C.I.D Crime and Railways, Gandhinagar, as a Drug Offender as defined under Section 2(f) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the Act of 1985).

2. By way of this petition, the petitioner has challenged the legality and validity of the aforesaid order.

3. Heard learned advocates appearing for the respective parties.

4. Learned advocate for the petitioner has averred in his application that there was no material available with the detention authority to indicate as to how the public health or public order or public tranquility was disturbed in any manner. Thus, in absence of any such material on record, the order of detention ought not have been passed. It is further stated in the application by the learned advocate for the petitioner that the impugned order is passed without application of mind and prima facie the order is passed mechanically.

4.1. It was also apprised from the application that the impugned order was execution upon the detenue and presently he is detained in the Lajpor Central Jail, Surat.

5. On the other hand, learned APP, opposing the present petition contended that the detenue is habitual offender and his activities affected at the society at large. Hence, the Detaining Authority, considering the antecedents and past activities of the detenue, has passed the impugned order with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area of Vadodara and lastly prayed to dismiss the present petition.

6. Having considered the facts as well as the grounds raised in the application and submissions made by the learned APP appearing for the authorities, the core issue arise as to whether the order of detention passed by the Detaining Authority in exercise of his powers under the provisions of the Act of 1985 is sustainable in law or not?

7. We have carefully gone through the order passed by the concerned authority. It appears that the order impugned was executed upon the detenue and presently he is in Lajpor Central Jail, Surat. In the grounds of detention, reference of two criminal case for the offences punishable under Sections 8(c), 22, 22(b), 25 and 29 of the NDPS Act, 1985 registered with various Police Station against the detenue from 15.02.2022 to 21.06.2024 is made out.

7.1. In the impugned order, it is alleged that the activities of the detenue as a drug offender affects adversely or are likely to affect adversely the maintenance of public order as explained under Section 3 of the Act of 1985. Undisputedly, in the aforesaid alleged offences, the detenue was granted bail by the concerned Court..

8. Considering the impugned provisions of Section 2(f) of the concerned authorities. Hence, order, it appears that the Act of 1985 is referred by the the same is required to be reproduced. The same reads as under:

(f) "drug offender" means a person who

(i) imports any drug in contravention of section 10 of the Drugs and Cosmetics Act, 1940 (hereinafter in this definition referred to as "the Drugs Act"),

(ii) manufactures for sale, or sells, or stocks or exhibits for sale, or distributes any drug in contravention of section 18 of the Drugs Act,

(iii) manufactures for sale any Ayurvedic (including Siddha) or Unani drug in contravention of section 33D of the Drugs Act,

(iv) sells, or stocks or exhibits for sale or distributes any Ayuryedic (including Siddha) or Unani drug other than that manufactured by a manufacturer licensed under Chapter IV-A, in contravention of section 33E of the Drugs Act,

(v) cultivates any coca plant, opium poppy, or cannabis plant or produce, manufactures, possesses, sells, purchases, transports, ware- houses, imports inter-State, exports inter-State, imports into India, exports from India or tranships any narcotic drug or psychotropic substance in contravention of section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985,

(vi) knowingly expends or supplies any money in furtherance or support of the doing of any of the things mentioned in any of the sub-clauses (i) to (v) by or through any other person, or

(vii) abets in any manner the doing of any of the things mentioned in any of the sub-clauses (i) to (vi);

9. After consideration of the available material, we are of the considered view that on the basis of two cases, the authority has wrongly arrived at the subjective satisfaction that the activities of the detenue could be termed to be acting in a manner prejudicial to the maintenance of public order. In our considered opinion, the said offences do not have any bearing on the maintenance of public order. In this regard, we would like to refer the decision of the Apex Court in the case of Dhanya M. v. State of Kerala and others reported in AIR 2025 SC 2868. In para-9 and para-21 of the said decision, the Honble Supreme Court has observed as under:

9. It is well settled that the provision for preventive detention is an extraordinary power in the hands of the State that must be used sparingly. It curtails the liberty of an individual in anticipation of the commission of further offence(s), and therefore, must not be used in the ordinary course of nature. The power of preventive detention finds recognition in the Constitution itself, under Article 22(3)(b). However, this Court has emphasized in Rekha v. State of Tamil Nadu3 that the power of preventive detention is an exception to Article 21 and, therefore, must be applied as such, as an exception to the main rule and only in rare cases.

..

21. This Court in SK. Nazneen (supra), had observed that the State should move for cancellation of bail of the detenu, instead of placing him under the law of preventive detention, which is not the appropriate remedy. Similarly, in

Ameena Begum v. State of Telengana9 , this Court observed :

59. It is pertinent to note that in the three criminal proceedings where the detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned detention order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.

60. In Vijay Narain Singh v. State of Bihar [Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14 : 1984 SCC (Cri) 361] , Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed : (SCC pp. 35-36, para 32)

32. It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court. (Emphasis supplied)

10. For the aforesaid reasons, we are of the considered opinion that, the material available on record are not sufficient for holding that the alleged activities of the detenue have either affected adversely or likely to affect adversely the maintenance of public order and therefore, the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law.

11. Accordingly, this petition stands allowed. The order impugned dated 11.11.2025 passed by the respondent authority is hereby quashed. We direct the detenue to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service permitted.