

CC No. 9008272/99

DRAFT MODEL ORDER

¹
Criminal Case No :-

Order Below Exhibit-1

(1) This case is filed under The Gujarat Police Act for the violation of orders passed by appropriate authority under the provision of the G.P. Act, 1951 (Here in after referred as The Act). The Act has been enacted for regulating the method of working through out the state by the police and for the maintenance of public order. One of the purpose of The Act is embedded in the preventive measures taken by police, such preventive measures are often spontaneous and requires arrest without warrant, otherwise without such power the preventive measures will become infructuous. After the preventive measures are taken and when circumstances so require then the situation ripens into registration of case. At this stage, the scheme of the Act is also required to be looked into, it clear from provisions of the act that section 90A is declared cognizable through its sub clause (4) and section 118 through its sub clause 1C and section 143-B thus whenever legislature intends to make particular provision cognizable, the same is specifically made while rest are left undeclared.

(2). In the case of State Of Gujarat v. Bhimji Manji and Ors. reported in 1968 Cr.L.J.156, Divisional Bench of Hon'ble High Court observed in para-3 that, "This is subject only to an enactment, if any, which regulates the manner or place of investigation, enquiry, trial or otherwise dealing with such offence. Thus, it appears that even when an investigation is to be made and an enquiry, trial or otherwise dealing with such offence. Thus, it appears that even when an investigation is to be made and an enquiry and a trial have to be held for offences against other laws, the Courts have to look to the provisions of the Code, unless it appears that any special enactment in force at the material time makes a special provision in the matter of dealing with such offences."

Further The Hon'ble High Court of Gujarat held in para 4 as under:-

4. This will take us to a consideration of the relevant rules. The Rules are made by the Central Government in exercise of its emergency powers conferred by sec. 3 of The Defence of India Act (No. 51 of 1962). Rule 125(9)(a) of the Rules, which is the material rule for our consideration, corresponds to rule 81(4) of the Defence of India Rules made under the Defence of India Act, 1939, with the only difference that the proviso to clause (a) of rule 125(9)(a) of the Rules is not to be found in the 1939 Rules. Rule 125(9)(a) of the Rules is the punishing rule for contravention of any provision of rule 125 or of any order made under the rule. Rule 152 of the Rules, which corresponds to rule 128 of the Defence of India Rules, 1939, deals with the general powers of any police officer to arrest without a warrant. It reads as under:

"152. General powers to arrest without warrant. - Any police officer may arrest without warrant any person who is reasonably suspected of having committed or of