

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 3054 of 2026**

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ASIF @ BABU S/O. HAIDAR @ KALU SAIYAD THRO. ASIF RAJABBHAI
MANSURI

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MS JAYSHREE C BHATT(170) for the Applicant(s) No. 1

MS VRUNDA SHAH, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 18/03/2026

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

Rule. Learned APP waives service of notice of Rule on behalf of the respondents. By consent, Rule is fixed forthwith.

1. The present petition is directed against the order of detention dated 06.02.2026 (actual date of detention 09.02.2026) passed by the respondent – detaining authority in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short ‘the Act’), whereby the respondent - detaining authority has detained the petitioner - detinue as defined under Section 2(g) of the Act.

2. Heard the learned advocate appearing for the petitioner – detinue and learned APP appearing for the respondent – State.

3. Learned advocate for the petitioner - detainee submits that the impugned order of detention is required to be quashed and set-aside since the detaining authority has passed the order of detention solely on the ground of registration of 1 FIR, (i) for the offences under Sections 8(C), 22(C) and 29 of NDPS Act with Athwalines Police Station, and that by itself cannot bring the case of the petitioner - detainee within the purview of definition under Section 2(g) of the Act. Learned advocate for the petitioner – detainee further submitted that the illegal activities alleged to have been carried out or likely to be carried out, as alleged, cannot have any nexus or bearing with the maintenance of public order and at the most it can be said to be a breach of law and order. Further, except the statements of the witnesses and the registration of the above FIRs, no other relevant and cogent material is on record which would show that the alleged anti-social activities of the petitioner - detainee fall under the category of breach of public order. Learned advocate further submitted that it is not possible to hold, on the basis of the facts of the present case, that the activities of the petitioner - detainee with respect to the criminal cases had affected and disturbed the social fabric of the society, eventually which would become threat to the very existence of the normal and routine life of the people at large or that on the basis of the registration of criminal cases, the petitioner - detainee had put the entire social apparatus in disorder, making it difficult for the whole system to exist, as a system governed by rule of law, by disturbing the public order. It is also submitted that the detaining authority has also not applied its mind to the fact that the petitioner – detainee is released on bail in all the offences.

4. Learned APP for the respondent-State has supported the detention order passed by the detaining authority and has submitted that sufficient materials and evidences were found during the course of investigation

and the same were even supplied to the petitioner – detainee, which indicate that the detainee is in the habit of indulging into activities as defined under Section 2(g) of the Act and considering the facts of the case, the detaining authority has rightly passed the order of detention and the same deserves to be upheld by this Court.

5. Having heard the learned advocates appearing for the respective parties and considering the documents and materials available on record, *prima facie*, it is found that the subjective satisfaction arrived at by the detaining authority cannot be said to be legal, valid and in accordance with law, inasmuch as the offences alleged in the FIRs cannot have any bearing on the public order as required under the Act and other relevant penal laws are sufficient enough to take care of the situation and that the allegations levelled against the petitioner - detainee cannot be said to be germane for the purpose of bringing the petitioner - detainee within the realm of the meaning of Section 2(g) of the Act. Unless and until there is some material to make out a case that the person has become a threat and menace to the society so as to disturb the whole tempo of the society and that all social apparatus goes in peril disturbing the public order at the instance of such person, in that circumstances, it cannot be said that the detainee is a person which would fall within the meaning of Section 2(g) of the Act. Except general statements, there is no other material on record which shows that the petitioner - detainee has acted in such a manner which has become dangerous to the public order.

6. After careful consideration of the material, we are of the considered view that on the basis of aforesaid cases, the authority has wrongly arrived at the subjective satisfaction that the activities of the detainee could be termed to be acting in a manner 'prejudicial to the maintenance of public order'. In our opinion, the said offences do not

have any bearing on the maintenance of public order. In this connection, we may refer to the decision of the Apex Court in the case of ***Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad, 1989 Supp (1) SCC 322***, wherein, the detention order was made on the basis of the registration of the two prohibition offences. The Apex Court after referring the case of ***Pushkar Mukherjee Vs. State of Bengal, 1969 (1) SCC 10*** held and observed that mere disturbance of law and order leading to detention order is thus not necessarily sufficient for action under preventive detention Act. Paras-17 & 18 are relevant to refer, which read thus:

“17. In this connection, we may refer to a decision of this Court in Pushkar Mukherjee v. State of West Bengal, where the distinction between ‘law and order’ and ‘public order’ has been clearly laid down. Ramaswami, J. speaking for the Court observed as follows:

10. “Does the expression ‘public order’ take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act.”

18. In the instant case, the detaining authority, in our opinion, has failed to

substantiate that the alleged anti- social activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld.”

7. For the reasons recorded, we are of the considered opinion that, the material on record are not sufficient for holding that the alleged activities of the detainee 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.

8. Accordingly, this petition stands allowed. The order impugned dated 06.02.2026 (actual date of detention 09.02.2026) passed by the respondent authority is hereby quashed. We direct the detainee to be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. Direct service permitted.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 18/03/2026 13:42:52