

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 5007 of 2026**

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SHAHROUKHKHAN ASHRAFKHAN PATHAN THRO PATHAN
AAYESHABANU SHAHROUKHKHAN

Versus

DIRECTOR GENERAL OF POLICE & ORS.

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Appearance:

MR M.NISAR VAIDHYA(3386) for the Applicant(s) No. 1

MR MOHDDANISH M BAREJIA(10612) for the Applicant(s) No. 1

MS ASMITA PATEL, APP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 20/04/2026

ORAL ORDER

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

[1] The petitioner came to be preventively detained vide the detention order dated 16/03/2026 passed by the respondent authority, as a Illicit Traffic as defined under Section 2(e) of The Prevention of Illicit Traffic In Narcotic Drugs And Psychotropic Substance Act, 1988 (hereinafter referred to as 'the Act of 1988).

[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 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 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 Central Jail, Surat. In the grounds of detention, reference of one criminal case as mentioned in the impugned detention order.

[7.1] In the impugned order, it is alleged that the activities of the detinue as a "Illicit Traffic" affects adversely or are likely to affect adversely the maintenance of public order as explained under Section 3 of the Act of 1988.

[8] Considering the impugned order, it appears that the provisions of Section 2(e) of the Act of 1988 is referred by the concerned authorities. Hence, the same is required to be reproduced. The same reads as under:

"(e) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-

- (i) cultivating any coca plant or gathering any portion of coca plant;*
- (ii) cultivating the opium poppy or any cannabis plant;*
- (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or ranshipment, of narcotic drugs or psychotropic substances;*
- (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those provided in sub-clauses (i) to (iii); or*
- (v) handling or letting any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),*

other than those permitted under the Narocctic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder and includes-

- (1) financing, directly or indirectly, any of the aforementioned activities;*
- (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and*
- (3) harbouring persons engaged in any of the aforementioned activities."*

[9] After consideration of the available material, we are of the considered view that on the basis of offence under the Act of 1988, the authority has wrongly arrived at the subjective satisfaction that the activities of the detenu 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 Hon'ble 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 detenu 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 16/03/2026 passed by the respondent authority is hereby quashed. We direct the detenu 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)

Kaushal Rathod