

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 9885 of 2026**

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BHARATBHAI CHIMANBHAI DHANANI THROUGH KALPESH DAHYABHAI
DHANANI
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR KISHAN R CHAKWAWALA(9846) for the Applicant(s) No. 1
MR. SHYAM R CHAKWAWALA(17305) for the Applicant(s) No. 1
MR MANAN MEHTA APP for the Respondent(s) No. 1
RULE NOT RECD BACK for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MS. JUSTICE GITA GOPI
and
HONOURABLE MR. JUSTICE L. S. PIRZADA

Date : 24/07/2026

ORDER

(PER : HONOURABLE MS. JUSTICE GITA GOPI)

1. By this petition under Article 226 of the Constitution of India the petitioner has challenged the order dated 04.07.2026 passed by the respondent No.2, directing him to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act of 1980" for short).

2. By way of this petition, the petitioner has challenged the legality and validity of the aforesaid order. The said order has been passed in purported exercise of powers conferred by sub-section (1) read with sub-clause (a) of sub-section (2) of Section 3 of the said Act.

3. This Court has heard learned advocate Mr. Kishan R.Chakwawala for the applicant and Mr. Manan Mehta, learned Additional Public Prosecutor for the respondent State.

4. Learned advocate Mr. Chakwawala for the applicant submitted that immediately following the registration of the second FIR, enforcement officials raided, locked and entirely seized the warehouse and factory premises of the business entity. Mr. Chakwawala stated that since the physical infrastructure, inventory, and operation capabilities of the business stand legally halted and remained under strict police lockdown, there is absolute zero imminent danger, capacity or proximity for the detainee to repeat any alleged prejudicial activity. Mr. Chakwala stated that this Court in multiple rulings under the PBM Act has structuralized that where business licenses are suspended or premises are sealed by the state, the passing of a preventive detention order thereafter is an empty, redundant exercise of power showing an absence of genuine subjective satisfaction.

4.1 Learned advocate Mr. Chakwawala further submitted that the entire basis of the impugned order rests on two isolated, individual FIRS, the registration of two solitary criminal complaints does not establish a persistent, continuous, or habit driven course of conduct required to conclude supplies. Mr. Chakwawala stated that the offences do not involve hazardous substances, nor is there a wider public or private emergency shown to have been triggered by the detainee's actions.

5. On the other hand, learned State advocate opposing the application contended that the detenue is habitual offender and his activities affected the society at large. In such set of circumstances, 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

6. By exercising powers under Section 3(1) of the PBM Act of 1980, the District Magistrate passed detention order and the same was executed upon the applicant.

7. Having regard to the facts and circumstances of the present case as well as the submissions made by the respective parties, the issue falls for our consideration is as to whether the order of detention passed by the Detaining Authority in exercise of his power under the provisions of the PBM Act, 1980 is sustainable in law?

8. Before advertng to the submissions, we may refer to Section 3 of the Act, which authorized the authority to pass an order of detention. Section 3 reads as under:

"3. Power to make orders detaining certain persons.— (1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial

to the maintenance of supplies of the commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, the expression “acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community” means-

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a), with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:—

(a) district magistrates;

(b) Commissioners of Police, wherever they have been appointed, may also if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply

subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1) the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

9. The order impugned was executed upon the applicant and presently he is in Jail. The primary material relied upon by the Detaining Authority to formulate its subjective satisfaction consists of two FIRs i.e. (i) for the offence punishable under Sections 318(2), 336(3), 340(2) and 61(2)(a) of BNS and Section 7 of Essential Commodities Act (ii) for the offence under Sections 3 and 7 of Essential Commodities Act, in which the applicant was granted bail; further it is alleged that, the activities of the detainee affects adversely or are likely to affect adversely the maintenance of public order as explained under the said Act.

10. After careful consideration of the material, we are of the considered view that on the basis of criminal case, 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'.

11. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Supreme Court in the case of **Dr. Ram**

Manohar Lohia v. State of Bihar and Others, (1966) 1 SCR 709. In this judgment, His Lordship Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:

"....Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State...."

11.1 The concept of 'public order' and 'law and order' has been dealt with in the case of **Pushkar Mukherjee & Others v. The State of West Bengal, AIR 1970 SC 852**. In this case, the Supreme Court had relied on the important work of Dr. Allen on 'Legal Duties' and spelled out the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

11.2 The Supreme Court in the case of **Babul Mitra alias Anil Mitra v. State of West Bengal & Others, (1973) 1 SCC 393** had an occasion to deal with the question of "public order" and "law and order". The Supreme Court observed that the true distinction between the areas of "law and order" and "public Order" is one of degree and extent of the reach of the act in question upon society. The court pointed out that the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

11.3 In **Commissioner of Police & Others, v. C. Anita (Smt.), (2004) 7 SCC 467**, the Supreme Court again

examined the issue of "public order" and "law and order" and observed thus:

"7.The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

This question has to be faced in every case on its facts."

11.4 The Hon'ble Supreme Court in the case of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra And Others, (2012) 2 SCC 72**, held as under:

"9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at

the proper satisfaction."

11.5 In the case of **Vijay Narain Singh Vs. State of Bihar**, (1984) 3 SCC 14, the Hon'ble Supreme Court observed as under:

"...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."

11.6 In the case of **S.K. Nazneen, AIR Online 2022 SC 1220**, the Hon'ble Supreme Court, 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 Telengana**, (AIR 2023 SC 4273), it has been 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."

12. 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 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.

13. Accordingly, this petition stands allowed. The order impugned dated 04.07.2026 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.

(GITA GOPI,J)

(L. S. PIRZADA, J)

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