

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 9799 of 2026**

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SUBHASH S/O UDAYLALJI SEN THRO SUNIL UDAYLAL SEN
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR MATAFER R PANDE(3952) for the Applicant(s) No. 1
MR LB DABHI APP for the Respondent(s) No. 1
RULE NOT RECD BACK for the Respondent(s) No. 3
RULE SERVED for the Respondent(s) No. 2

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

Date : 03/08/2026

ORDER

(PER : HONOURABLE MS. JUSTICE GITA GOPI)

1. The petitioner herein came to be preventively detained vide the detention order dated 03.07.2026 passed by the respondent authority as a “money lending offender” as defined under Section 2(ga) of the Gujarat Prevention of Anti-social Activities Act, 1985 (herein after referred as ‘the Act of 1985).

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

3. This Court has heard learned advocates for the respective parties.

4. Learned advocate for the detenue submits that the

grounds of detention has no nexus to the “public order”, but is a purely a matter of law and order, as registration of the offence cannot be said to have either affected adversely or likely to affect adverse the maintenance of public order as contemplated under the explanation sub-section (1) of Section 3 of the Act, 1988 and therefore, where the offences alleged to have been committed by the detainee have no bearing on the question of maintenance of public order and his activities could be said to be a prejudicial only to the maintenance of law and order and not prejudicial to the maintenance of public order.

5. On the other hand, learned State advocate opposing the application contended that, the detainee is habitual offender and his activities affected at the society at large. In such set of circumstances, the Detaining Authority, considering the antecedents and past activities of the detainee, 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 Surat City.

6. Having considered the facts as well as the submissions made by the respective parties, the 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 1988 is sustainable in law?

7. The applicant had been released on anticipatory bail by this Court in Criminal Misc. Application No.9947 of 2026 on

02.07.2026.

7.1 The order impugned observes that the detenue continued with this activity of lending money on loan and would forcible recovery caused would cause mental harassment to the innocent public and those activity would be against public interest. It has been noted that the illegal activity would as the detenue is doing more the work except lending loan on higher rate of interest. The order has been made on the ground that the person is required to be prevented from acting in any manner prejudicial to the maintenance of the public order.

8. The order impugned was executed upon the applicant. In the grounds of detention, a reference of one criminal case registered against the applicant for the offence punishable under Sections 308(2) of BNS and Sections 40, 42(a) and 42(d) of the Gujarat Money-Lenders Act, 2011 registered with Chowkbazaar Police Station, Part-A was made and further it is alleged that, the activities of the detenue affects adversely or are likely to affect adversely the maintenance of public order as explained under the provisions of Act of 1988.

9. After careful consideration of the material, we are of the considered view that, there is no material placed before the authority to establish that the applicant was convicted of an offence punishable under the provisions of Gujarat Money Lenders Act, 2011 within a period of 3 years from the date of such conviction who commits or attempts to commit or abets

the commission of offences under Chapter IX of the Gujarat Money Lenders Act, 2011 or a money lender or any person engaged by the money lender or someone acting on his behalf, who uses or threatens to use physical violence directly or otherwise or through any person against any person for the purpose of collecting any part of the loan or interest thereon or any instalment thereof or for taking any movable or immovable property connected with the loan transaction or the realization of whole or part of the loan amount or interest thereon. Thus, therefore, we are of the firm view that, the activities as alleged would not fall under the definition of 'money lending offender'. After careful consideration of the material, we are of the considered view that on the basis of said criminal cases, the authority has wrongly arrived at the subjective satisfaction that the activities of the detinue could be termed to be acting in a manner 'prejudicial to the maintenance of public order'.

10. The term 'money lending offender' defined under Section 2(ga) reads as under:

"money lending offender" means a person, who commits or attempts to commit or abets the commission of offences under Chapter IX of the Gujarat Money Lenders Act, 2011 or a money lender or any person engaged by the money lender or someone acting on his behalf, who uses or threatens to use physical violence directly or otherwise or through any person against any person for the purpose of collecting any part of the loan or interest thereon or any instalment thereof or for taking any movable or immovable property connected with the loan transaction or the realization of whole or part of the loan amount or

interest thereon."

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 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 and considering the that the applicant has been granted anticipatory bail and no other incident has been recorded after release by way of any FIR, we are of the considered opinion that, the material 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.

13. Accordingly, this petition stands allowed. The order impugned dated 03.07.2026 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.

(GITA GOPI,J)

(L. S. PIRZADA, J)

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