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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/LETTERS PATENT APPEAL NO. 645 of 2021

In R/SPECIAL CIVIL APPLICATION NO. 6591 of 2021

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ASHESHBHAI INDRAVADANBHAI DUDHIYA (GANCHI)
Versus
STATE OF GUJARAT & 2 other(s)

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Appearance:

MR NIRUPAM NANAVALTY, SR. COUNSEL with MR.HARDIK
BHARHMBHAT(3741) for the Appellant(s) No. 1
for the Respondent(s) No. 2,3
MS S. S. PATHAK, AGP (99) for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
VIKRAM NATH**
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 06/08/2021

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1. We have heard Mr. Nirupam Nanavaty, learned Senior Advocate assisted by Mr. Hardik Brahmbhatt, learned counsel for the appellant and Ms. Shruti S. Pathak, learned AGP for the State respondents.

2. The affidavit-in-reply filed on behalf of the State is on record.

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3. The present Letters Patent Appeal has been preferred under Clause 15 of the Letters Patent Act assailing the correctness of the judgment and order dated 5.7.2021 passed by the learned Single Judge in Special Civil Application No.6591 of 2021, whereby the writ petition challenging the order of preventive detention was dismissed.

4. Learned counsel for the appellant submitted that there are only two cases registered against the appellant on the basis of which the detention order is passed. First being a case under Sections 4 and 5 of the Gambling Act based on an FIR dated 7.1.2017, the second is about an offence under Sections 4 and 5 of the Gambling Act, Section 269 of the Indian Penal Code and Section 51(b) of the Disaster Management Act wherein the FIR had been lodged on 14.10.2020. Apart from it, there is no other material against the appellant. The invoking of jurisdiction under the preventive detention law is totally unjustified as there was no disturbance of public order. It is also submitted by the learned counsel that the appellant had been falsely implicated in the said two cases. It is also submitted that the appellant is in custody

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since 26.03.2021. It is next submitted that a recent Division Bench judgment of this Court dated 31.08.2020 passed in the case of **Vijay Alias Ballu Bharatbhai Ramanbhai Patni vs. State of Gujarat, being Letters Patent Appeal No.454 of 2020**, squarely covers the case of the present appellant.

5. On the other hand, Ms. Pathak, learned Assistant Government Pleader submitted that the order of detention is fully justified and the detaining authority after due satisfaction has passed the said order. It is also submitted by Ms. Pathak that in all nine offences are registered against the appellant in different police stations under the Prevention of Gambling Act and, therefore, the appellant be considered as habitual offender as he falls within the definition of Section 2(bb) of 'common gaming house keeper' under the PASA Act. The detaining authority has therefore taking into consideration the overall active involvement of the appellant coupled with the number of offences which are registered, arrived at a subjective satisfaction that the appellant is likely to continue with the activities of gambling as the same can be seen from the details of the number of offences in which he is involved. The learned Single

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Judge after dealing with the entire material on record declined to interfere with the subjective satisfaction of the detaining authority. This Court as such may not interfere with the order of the learned Single Judge and dismiss the appeal.

6. In the judgment dated 31.08.2020 in the case of **Vijay alias Ballu (supra)**, the issue relating to public order and law and order problem had been dealt with in detail. Law of preventive detention has to be construed not as in an ordinary criminal proceedings of detaining or arresting a person who is said to have committed crime where the procedure is provided and the remedy is available. However, the law of preventive detention is to be strictly followed as per the statute and the settled law on the point. In the present case, by no stretch of imagination can we hold that such incidents could disturb public order.

7. We are accordingly of the view that the order of detention cannot be sustained. Accordingly, the appeal succeeds and is allowed. The judgment and order of the learned Single Judge dated 5.7.2021 passed by the learned Single Judge in Special

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Civil Application No.6591 of 2021 is set aside. The detention order dated 24.12.2020 is quashed. The appellant be set at liberty forthwith if not required in any other criminal case.

(VIKRAM NATH, CJ)

(BIREN VAISHNAV, J)

*** VATSAL

