

Reserved On : 11/11/2025
Pronounced On : 04/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 10872 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

=====		
Approved for Reporting	Yes	No
=====		

NAVDEEP MATHUR & ORS.

Versus

STATE OF GUJARAT & ORS.

=====

Appearance:

MR B S SOPARKAR(6851) for the Applicant(s) No. 1,2,3,4,5

NOTICE SERVED for the Respondent(s) No. 2

MR. HARDIK A. DAVE, PUBLIC PROSECUTOR for the Respondent(s) No. 1,3

MR. H.K.PATEL, APP

=====

CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY

1. The Petitioners have filed this Petition under Article 226 of the Constitution of India for the following reliefs:

(a) *quash and set aside the impugned orders at Annexure-A to this Petition.*

(b) *quash and set aside also those orders that are also passed for the same purpose and will operate for subsequent period after lapse of orders at Annexure 'A'.*

(c) *direct the Respondent No.2 to actively publicize every order passed u/s 144 of CRPC or Section 37 of Gujarat Police Act and in operation by physically pasting it at prominent places, printing it in*

newspapers, broadcasting it through radio and television, sharing the same through website, Twitter, Facebook and Instagram in Gujarati and English.

(d) pending the admission, hearing and final disposal of this Petition, to stay implementation and operation of the orders at Annexure 'A' and any other orders already passed for the periods further thereto.

(e) pending the admission, hearing and final disposal of this Petition direct the Respondent No.2 to actively publicize every order passed u/s 144 of CRPC or Section 37 of Gujarat Police Act and is in operation by physically pasting it at prominent places, printing it in newspapers, broadcasting it through radio and television, sharing the same through website, Twitter, Facebook and Instagram in Gujarati and English.

(d) any other and further relief deemed just and proper be granted in the interest of justice;

(e) to provide for the cost of this petition."

2. The facts and circumstances giving rise to the filing of the present petition are such that in the year 2019, the petitioners herein were protesting against the implementation of The Citizenship Act at Ahmedabad. The Police Authorities had registered an offence against the Petitioners for violation of the Notification issued under Section 144 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "S.144 of the Code") [Section 163 of Bharatiya Nagarik Suraksha Sanhita, 2023]. However, such Notification being issued from time to time, were not published or publicized sufficiently, and therefore, the petitioners herein were not having any knowledge about issuance of any

such Notification. It is brought on record that, since the year 2016 till the year 2019, such Notifications were issued by the authority concerned from time to time, and issuance of such Notifications amount to curtailment of the fundamental right of the petitioners of holding a protest against the elected Government in a peaceful manner. Therefore, being aggrieved by such Notifications, the present petition is filed by the petitioners.

3. Heard learned Advocate Mr. B.S.Soparkar appearing for the petitioners and learned Public Prosecutor Mr. Hardik A. Dave for the Respondent – State.

4. Rule. Learned Public Prosecutor waives services service of Rule on behalf of the Respondent – State.

5. Learned Advocate for the Petitioners submitted that the respondent authorities have been issuing Notifications under S.144 of the Code time and again and, issuing of such Notifications has continued since the year 2016 to 2019. By such Notifications, the public at large has been restrained from gathering at any place in the limits of Ahmedabad City four in number or more. The Respondent authorities have not stated the facts making out the need for exercising the powers under S.144 of the Code. He further submitted that such Notifications are issued one after the other, and sometimes, the other Notification is issued even when the earlier Notification issued in this regard is in force. By issuing the repetitive Notifications one after the other, the Respondent authorities are trying to circumvent the provisions of S. 144(4) of the Code. As per the said provision, such Notification is to hold the field for a period of two months only. However, by resorting to the practice of issuing repetitive Notifications one after the other, the Respondent authorities have been successfully managing to see that such Notifications remain in operation for a period of more than two months. He further submitted that, though in the

recent past, the practice of issuing the Notifications under Section 144 of the Code has been discontinued, however, its place is taken by the Notifications issued under Section 37(1) of the Gujarat Police Act (hereinafter referred to as “the G.P. Act”). He submitted that, before exercising the powers under Section 144 of the Code, the Respondent authorities are required to issue notice to the persons, against whom, the proposed order is directed. However, no such notice has ever been issued by the authorities to the affected persons. Moreover, as per the said legal position, these powers are required to be exercised only to meet the emergent situation. The Notifications issued from time to time, which are on record, say nothing about any such emergent situation. The authorities do not appear to have carried out any prior inquiry before issuance of the impugned Notifications. He submitted that these Notifications have been issued time and again by the Respondent authorities to prevent the legitimate protest against the policies of the elected Government. These Notifications suppress the legitimate expression of opinion or grievance or exercise of any democratic rights. These orders put unreasonable restriction upon the fundamental rights of the citizens of the country. He further submitted that though the Notifications impugned in the present petition have lived their lives, the present petition would be maintainable as those Notifications are required to be declared as illegal and set aside as being violative of the constitutional rights of the citizens. The Respondent authorities are also required to be guided for the proper issuance of the orders in future. He also submitted that the powers conferred under Section 37(1) of the G.P. Act are similar to the powers conferred under S.144 of the Code and the object of both the provisions is preservation of public peace and tranquility and prevention of disorder. Therefore, the Notifications issued under Section 37(1) of the G.P. Act are also amenable to writ jurisdiction under Article 226 of the Constitution of India. He therefore submitted to allow the present petition and quash and set aside the Notifications impugned in the present petition issued by

the office of the Commissioner of Police, Ahmedabad City on 3.11.2025 exercising powers under Section 37(1) of the G.P. Act.

6. Learned Advocate for the Petitioner has sought to rely upon the following judgments in support of his submissions:

- (i) Sowmya R. Reddy v. State of Karnataka rep., by its Chief Secretary & Ors. – 2020 SCC Online Kar 1527
- (ii) Siddegowda & Anr. v. Kullegowda – 1950 SCC Online Kar 33
- (iii) The State of Maharashtra v. Shri George Fernandez & Ors. - 1984 SCC OnLine Bom 117
- (iv) Ramesh Mulchand Ramani v. The State of Maharashtra – 1980 SCC Online Bom 132
- (v) Bai Shanta Shamalbhai v. Union of India – First Appeal No. 817 of 1979
- (vi) Rajubhai Premabhai Patel v. State of Gujarat – Criminal Appeal No. 560 of 2002
- (vii) Acharya Jagdishwaranand Avadhuta & Ors. v. Commissioner of Police, Calcutta & Anr. - (1983) 4 SCC 522
- (viii) Sowmya R. Reddy v. State of Karnataka – 2020 SCC Online Kar 1527
- (ix) Gulam Abbas & Ors. v. State of U.P. - (1982) 1 SCC 71
- (x) Anuradha Bhasin v. Union of India – 2020 SCC Online SC 25

7. Learned Public Prosecutor Mr. Hardik A. Dave appearing for the Respondent authorities has opposed the present petition. He submitted that the Notifications impugned in the present Petition have expired long back, and therefore, there is no need for those Notifications to be declared as illegal and hence, there is no question of setting aside those Notifications. The present

petition has therefore become infructuous. He submitted that the learned Advocate appearing for the Petitioners has miserably failed to show violation of any constitutional rights of the petitioners because of the issuance of the Notifications in question. He further submitted that Sub sections (6) and (7) of S.144 of the Code provide for an alternative remedy available to the petitioners against such Notifications. The Petitioners herein have not availed those remedies and therefore, the Petition is not maintainable. He also submitted that the authorities concerned, while exercising their powers under S.144 of the Code in issuing the impugned Notifications, have taken into consideration the emergent situation of the area and found it necessary to issue such Notifications for maintenance of law and order situation in the area. The intention on the part of the Respondent authorities in issuing such Notifications cannot be doubted. He further submitted that the Notification dated 3.11.2025 issued by the Commissioner of Police, Ahmedabad City in exercise of powers under Section 37(1) of the G.P.Act mentions the facts and circumstances leading to issuance of the Notification in question. The said Notification also sets out the reasons for its issuance. Therefore, it cannot be argued that the said Notification does not give proper reasons for issuance of the same. He submitted that all the Notifications have been given wide publicity and they have also been placed on various social media platforms. He therefore submitted to dismiss the present petition.

8. Heard learned Advocates for the parties. As noted above, the present petition is filed by the petitioners being aggrieved by issuance of Notifications under S.144 of the Code on regular basis.

8.1 Section 144 reads as under:

“144. Power to issue order in urgent cases of nuisance or apprehended danger –

(1) *In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section [134](#), direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.*

(2) *An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed Ex-parte.*

(3) *An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.*

(4) *No order under this section shall remain in force for more than two months from the making thereof;*

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made

by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to Sub-Section (4).

(7) Where an application under Sub-Section (5), or Sub-Section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.”

8.2 A bare perusal of the said provision would make it clear that these powers are required to be exercised to overcome the emergent situation of any unrest and to prevent obstruction, annoyance or injury to any person or danger to human life, health or safety or a disturbance of a public tranquility or a riot or an affray.

9. In furtherance of these objects, if the Notifications impugned in the present petition are perused, they do not give any impression that the situation

prevalent at the relevant time required the authorities concerned to take recourse to the power under S.144 of the Code. As per the settled legal position, these powers being amenable to the judicial review and scrutiny, exercise of it, requires to appear reasonable and therefore, the authorities exercising these powers are also required to give their reasons for the same. The Notifications questioned in the present petition do not bear any reasons given by the authorities for issuing the same. When, by exercise of powers under S.144 of the Code, the fundamental rights or constitutional rights of a class of citizens are being affected, the exercise needs to be transparent. The scheme of the provision of S.144 of the Code itself makes it clear that the authority exercising these powers is required to come to a conclusion that it is necessary to exercise these powers to prevent disturbance to public peace and tranquility. The Apex Court in its judgment in case of *Anuradha Bhasin V/S Union of India & Others* [2020 (3) SCC 637], has observed that the provision provides for certain safeguards for ensuring that the power is not abused. As per these safeguards, the authority, so as to come to conclusion that it is necessary to exercise these powers, is required to undertake a prior inquiry. No such inquiry appears to have been undertaken by the Respondent authorities prior to issuance of the impugned Notifications. As per the safeguards as discussed by the Apex Court in *Anuradha Bhasin* (Supra), the material facts are also required to be mentioned in the order. The impugned notifications do not mention any such material facts. The safeguards and procedure prescribed in the Section are not an empty formality. Their strict adherence is mandatory as the impugned notifications propose to impose restrictions upon the citizens affecting their fundamental rights.

10. Sub Section (2) of S.144 of the Code empowers the authority to exercise such powers *ex parte* in cases of emergency or in cases where the circumstances do not admit of service of notice in due time. Therefore, in the

cases except the cases of emergency, the authority concerned is also required to issue notice to the affected parties before exercising the powers under S.144 of the Code.

11. As noted herein above, the impugned Notifications do not state such emergent situation prevailing at the relevant time and therefore, it was incumbent upon the Respondent authorities to issue notice to the affected parties.

12. The Apex Court in its judgment in case of **Gulam Abbas & Ors.** (supra) has held that:

“It is only in an extreme extraordinary situation, when other measures are bound to fail, that a total prohibition or suspension of their rights may be resorted to as a last measure.”

12.1 Therefore, prior to resorting to exercise of powers under S.144 of the Code, it was incumbent upon the Respondent authorities to take recourse to the other measures available to them under the law for maintenance of peace and tranquility and it was only when those measures were found to be insufficient, the powers in question could have been exercised. There is nothing on record to indicate that the Respondent authorities had even taken recourse to the other measures and it was only upon their failure that the powers in question were exercised.

13. The material available on record indicates that the Respondent authorities continued to issue Notifications under S.144 of the Code one after the other. Learned Advocate appearing for the Petitioner is right in contending that, on occasions, the subsequent Notification was issued even when the earlier notification was holding the field.

14. Sub Section (4) of S.144 of the Code provides that, an order issued under the said Section, shall remain in force only for the period of two months and not more than that. The proviso to the said Sub Section empowers the State Government to extend the period of such order if it considers it necessary to so do for preventing danger to human life, health or safety or for preventing a riot or any affray.

15. From the record it appears that, in none of the case of impugned Notifications, the State Government has thought it necessary to extend the period of Notification, and despite the same, the Respondent authorities, by issuance of repetitive Notifications, have seen to it that the Notifications issued under the exercise of powers under S.144 of the Code hold the field for the period longer than two months. If the authority issuing such Notification, thought it necessary that the period of such Notification was required to be extended for public safety, nothing prevented the authorities concerned from approaching the State Government under proviso to Sub Section (4) of S.144 of the Code. The authorities have clearly circumvented the said provision by issuing the Notifications one after the other.

16. The Apex Court in its judgment in case of **Acharya Jagdishwaranand Avadhuta & Ors.** (supra) has held that;

“the nature of the order under Section 144 of the Code is intended to meet emergent situation. Thus, the clear and definite view of this court is that an order under Section 144 of the Code is not intended to be either permanent or semi-permanent in character.”

17. The Apex Court in its judgment in case of Anuradha Bhasin (Supra), has held that though a tow month period outer limit for the Magistrate and a six-

month limit for the State Government has been provided under Section 144 Cr.P.C but the concerned Magistrate and the State Government must take all steps to ensure that the restrictions are imposed for a limited period. Thus, the authorities are expected not to impose restrictions for the maximum permissible limit. Whereas, the authorities in the present case have evolved a unique mechanism of issuing consecutive orders for circumventing the statutory mandate. By resorting such tactics, the authorities have tried to restrict the rights of the citizens beyond the permissible limits prescribed by the statute.

18. As pointed out by learned Advocate for the petitioner, the Respondent authorities have also been issuing similar such Notifications under Section 37(1) of the G.P. Act. As per the settled legal position, the powers available to the authorities concerned under S.144 of the Code as well as Section 37 of the G.P. Act are comparable to each other and their purpose is to achieve the objective for preservation of public peace and tranquility and prevention of disorder. Therefore, the principles, which apply to exercise of powers under S.144 of the Code, would also apply to be exercised under Section 37 of the G.P. Act.

19. Learned Advocate for the Petitioner has drawn the attention of this Court to the Notification dated 3.11.2025 issued by the office of the Commissioner of Police Ahmedabad City in exercise of powers under Section 37(1) of the G.P. Act. While issuing the said Notification, the office of the Commissioner of Police, Ahmedabad City has taken into consideration the fact that the incidents have been recorded in the areas of certain police stations of the Ahmedabad City, where the accused gathered with weapons like sword, knife, dagger, iron pipe etc. with an intention of committing offence of murder, attempt to murder or causing grievous injuries, and therefore, the office of the Commissioner of Police, Ahmedabad City, for maintenance of peace and

tranquility and safety of the public at large, thought it necessary to issue Notification. However, perusal of the said Notification does not indicate as to in which areas of City of Ahmedabad, such incidents occurred and when such incidents had occurred. Vide Notification in question, the Commissioner of Police, Ahmedabad City has prevented the residents of the entire City of Ahmedabad from doing certain acts. As noted herein above, these powers are required to be exercised only when the other measures available to the Respondent authority failed. It is the duty of the Police authorities to prevent the rogue elements from creating an atmosphere of unrest in the City, and for that purpose, an appropriate action is required to be taken against such elements. However, instead of doing so, by issuing the Notification in question, the office of the Commissioner of Police, Ahmedabad City has curtailed the constitutional right of the citizens of India, who are residing in Ahmedabad or are visiting Ahmedabad of raising a legitimate protest.

20. The Apex Court in its judgment in case of State of **Maharashtra v. George Fernandez & Ors.** (supra) has held that:

“It is one of the essential ingredients of Section 37(3) that the Commissioner of Police must consider the extent of prohibition qua assembly or procession proposed to be imposed by him as having rationale and proximate connection or nexus with the necessity for the prohibition of public order.”

20.1 The Apex Court further goes to hold that:

“Such a nexus is missing when a blanket ban is imposed.”

These observations would apply to the facts of the case on hand as well as the authorities concerned have miserably failed in demonstrating any such rationale and proximate connection or nexus between the prohibition sought to

be imposed with the necessity for prevention of public order.

21. The aforesaid discussion would make it clear that the powers have been exercised by the respondent authorities in utter disregard of the safeguards provided for exercise of the powers in question. Therefore, the exercise of powers by the authorities appears to be arbitrary in the present case. Therefore, the notification in question including the notification of the Police

rd
Commissioner dated 3 November 2025, are violative of the fundamental rights of the petitioners and therefore, are liable to be quashed and set aside.

23. It is argued that the Notifications have lived their lives. However, there would be many including the Petitioners, who would be facing prosecution for violation of these Notifications. Therefore, even if the Notifications have lived their lives and are no more in force today, their validity is required to be considered, as, if the same is not done, the Petitioners and many others, would be facing prosecution for violation of the Notification which stands declared arbitrary. Therefore, these Notifications were required to undergo the judicial scrutiny even after their expiry.

24. It is also argued by the State, that the Petitioners were having an alternative remedy to make a representation to the Respondent authorities against these Notifications. However, in view of the fact that these Notifications were not widely publicized as discussed herein above, the remedy available to the Petitioners could not be availed in time by them. Therefore this argument also does not stand.

25. It is sought to be canvassed on behalf of the Respondent authorities that these orders were given a wide publicity. However, learned Advocate appearing for the petitioners has demonstrated before this Court that these orders were not publicized adequately to make the public aware about the

same. Therefore, the impugned notifications fail themselves on this count too. In the present era, mere publication of such Notifications or orders in the official gazette would not be sufficient. Moreover, the public at large has no access to such official gazette. In the era, where several modes of mass communication, including social media platforms are available, it is incumbent upon the Respondent authorities to publish such Notifications / Orders by using such modes. While quashing and setting aside the Notifications impugned in the present petition as well as the Notification dated 3.11.2025 issued by the Commissioner of Police, Ahmedabad City being violative of fundamental rights of the citizens, the Respondent Authorities are hereby directed that, in future, while exercising such powers available under BNSS or Section 37 of the G.P.Act, due care shall be taken for adhering to the procedural aspects and the inherent safeguards required for exercising such powers and the Notifications / Orders issued under these provisions shall be given wide publicity on social media to make the public at large aware about it.

26. With these observations, the petition is hereby allowed. Rule is made absolute.

(M. R. MENGDEY,J)

J.N.W

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: JAYANTILAL NARAYAN WAGHELA(HC00178), Principal Pvt. Secretary, at High Court of Gujarat on 05/12/2025 11:51:58