
(1992) 01 GUJ CK 0013
In the Gujarat High Court

Dilipkumar Amrutlal Ganatra

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 18-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 15, 15, 3(2)

Citation : (1992) 2 GLR 1471 : (1992) 2 GLR 1460

Hon'ble Judges : S.D. Dave, J;K.J. Vaidya, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.—Three important questions of the paramount public importance that arise for our consideration in group of these 8 detention matters are as under:

Firstly, "Whether enmass cyclostyled paroles granted to the detenu u/s 15 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "BM Act") and that too on the basis of general policy adopted by the State Government that on every religious festivals like Diwali, Id, X'mas and Makarsankranti, etc., the detenu may be "temporarily released" on parole without even waiting for the request application, in the first hand retrospectively vitiates the subjective satisfaction of the State Government regarding original order of detention passed by the Detaining Authority and/or on the other hand prospectively also, the same vitiates the further continued detention of the detenu?"

Secondly, "Whether Section 15 of the BM Act vests any absolute, unfettered and arbitrary powers in the State Government to lightly "temporarily release" the detenu on parole, unmindful of the underlying spirit and object of the BM Act for which he essentially and actually came to be preventively detained ?" and

Thirdly, "Whether the guidelines prepared by the State Government for "temporarily releasing" the detenu on parole either on the ground of religious

festivals and/or on the ground of illness, etc., in later case without any indepth inquiry regarding the truthfulness and genuineness of the causes pleaded in support of the same, which ex-fade run counter to the preventive object of the BM Act can be said to be legal and valid exercise of powers and accordingly be permitted to continue as they are?

2. At the very outset it may be stated, that at the joint request and with the consent of all the learned Advocates appearing for the respective parties, we have heard all these petitions together and accordingly therefore also propose to decide and dispose of the same by this common judgment.

2.1. It may also be further stated that since in all these petitions, the questions raised and to be decided are all common questions of law which are capable of being decided on certain undisputed facts, we do not deem it necessary to unnecessarily burden the pages of this judgment by setting out each and every ground of detention in detail from each of these petitions save and except those few undisputed essential facts which are germane for the just appreciation and determination of the points involved.

3. Few relevant facts: In order to have on the spot factual perspective emerging from the various grounds of detention, in each of these petitions, we for the sake of brevity and convenience, reproduce the relevant facts and circumstances from each of the petitions which are as under: (1) In Special Criminal Application No. 1400 of 1991, the petitioner came to be detained by an order dated 9-9-1991 passed by the District Magistrate, Rajkot, for the alleged black-marketing activities of the essential commodity, namely, Edible Oil. Thereafter, u/s 15 of the BM Act, he was temporarily released on parole; firstly on the ground of Diwali festival from 4-11-1991 to 11-11-1991 and thereafter for one day on the ground of illhcalth-in all for 8 days. (2) In Special Criminal Application No. 1540 of 1991, the petitioner came to be detained by an order dated 30-8-1991 passed by the District Magistrate, Bhavnagar for the alleged black-marketing activities of the essential commodity, namely, LPG Gas Cylinders. Thereafter, he was temporarily released on parole from 7-9-1991 to 9-9-1991 (3 days), from 13-9-1991 to 17-9-1991 (4 days) and from 1-11-1991 to 8-11-1991 (8 days)-in all for 15 days. (3) In Special Criminal Application No. 1632 of 1991, the petitioner came to be detained by an order dated 19-10-1991 passed by the District Magistrate, Gandhinagar for the alleged black-marketing activities of the essential commodity, namely, Wheat. Thereafter, he was temporarily released on Festival parole from 4-11-1991 to 11-11-1991 (for 8 days). (4) In Special Criminal Application No. 1633 of 1991, the petitioner came to be detained by an order dated 19-10-1991 passed by the District Magistrate, Gandhinagar, for the alleged black-maiketing activities of the essential commodity, namely, Wheat. Thereafter, he was temporarily released on Festival parole from 3-11-1991 to 11-11-1991 (8 days) and thereafter on further parole on the ground of illness of his wife from 22-11-1991 to 24-11-1991 (3 days)-in all for 11 days. (5) In Special Criminal Application No. 1713 of 1991, the petitioner came to be detained by an order

dated 19-10-1991, passed by the District Magistrate, Gandhinagar for his black-marketing activities of the essential commodity, namely, Wheat. Thereafter, he was temporarily released on Festival parole from 3-11-1991 to 11-11-1991 (for 8 days), (6) In Special Criminal Application No. 1754 of 1991, the petitioner came to be detained by an order dated 16-10-1991 by the District Magistrate, Junagadh for his alleged black-marketing activities of the essential commodity, namely, Edible Oil. Thereafter, he was temporarily released on parole from 25-10-1991 (even before the impugned order of detention came to be approved by the State Government) to 1-11-1991 and thereafter from 4-11-1991 to 11-11-1991 on the ground of Festival parole. (7) In Special Criminal Application No. 1755 of 1991, the petitioner came to be detained by an order dated 16-10-1991 passed by the District Magistrate, Junagadh for his alleged black-marketing activities of essential commodity, namely, Edible Oil. Thereafter, he came to be temporarily released on parole from 25-10-1991 (even before the impugned order of detention came to be approved by the State Government) to 29-10-1991 (5 days); from 1-11-1991 to 3-11-1991 (3 days); from 4-11-1991 to 10-11-1991 (7 days) and from 12-11-1991 to 19-11-1991-in all 15 days. (8) In Special Criminal Application No. 4 of 1992, the petitioner came to be detained by an order dated 13-8-1991, passed by the State Government, in respect of the alleged black-marketing activities of essential commodity, namely, Petrol/Diesel. Thereafter, he was temporarily released on parole from 24-8-1991 to 31-8-1991 (7 days); from 1-9-1991 to 4-9-1991 (4 days) and on Festival parole from 4-11-1991 to 11-11-1991 (8 days) -in all for 19 days. The facts stated above clearly disclose that in all these eight petitions, the petitioners were released on the ground of Diwali festival and due to illness either of themselves or their family members. On the basis of the particulars stated above (excluding the particulars pertaining to the temporary release on parole) and the relevant materials in support of the same, the concerned Detaining Authorities were satisfied that the petitioners were black-marketeers and were carrying on their alleged black-marketing activities prejudicial to the maintenance of the smooth supplies of commodities essential to the community in their respective areas. Further, looking to the very gravity and seriousness of the allegations spelling out the potentially of each of the petitioners to carry on their alleged illegal activities unabated in future also, disturbing the maintenance of supplies of the respective commodities essential to the community, the Detaining Authorities were still further satisfied that the usual remedy available under the ordinary laws of the land by way of some departmental proceeding? and actions and/or the prosecution u/s 12AA of the Essential Commodities Act, 1955, etc., were far too inadequate to meet with the exigencies of the grave situation created by them from carrying further their black-marketing activities. It was under these circumstances that the concerned Detaining Authorities were ultimately constrained to invoke the extraordinary powers under Sub-section (2) of Section 3 of the BM Act for clamping down the necessary orders of detection, which as seen above, came to be clamped down on each of the petitioners. The petitioners, under the circumstances, feeling aggrieved by the impugned order of

detention passed against them have approached this Court by way of the present eight writ petitions under Article 226 of the Constitution of India, inter alia praying for the issuance of the writ of habeas corpus and for quashing and setting aside the impugned orders of detention passed against them setting them at liberty forthwith.

4. The learned Advocates appearing for the petitioners, though have raised several contentions in their respective memos of petitions, at the time of hearing, they have chosen to mainly concentrate upon the one ground only, namely, "that the petitioners in all these cases were continuously out of detention for a number of days together, firstly, on the ground of they being enmassed mechanically temporarily released on parole on the eve of Diwali festival and secondly, thereafter on the ground of the alleged sickness of some of the petitioners or their family members, which in turn, obviously vitiated the subjective satisfaction of the concerned detaining authority rendering the impugned orders of detention and in any event at least the further continuous detention illegal and unconstitutional". According to the learned Advocates for the petitioners, the point raised by them was squarely covered by several decisions of this Court going to the very root of the matter rendering the impugned orders of detention illegal and unconstitutional. In support of this contention, they have invited our attention specially to the decision of this Court rendered in Spl. Criminal Application No. 15 of 1991 decided on 7/8-3-1991 (Coram: Hon"ble M/s. S.B. Majmudar and K.J. Vaidya, JJ.) (reported in 1992 (1) GLR 465, Rasiktal Nathulal Shah v. Dist. Magistrate, Himatnagar) which subsequently came to be relied upon and followed by another Bench of this Court in Spl. Criminal Application No. 806 of 1991, decided on 5-8-1991 and Spl. Criminal Application No. 807 of 1991, decided on 6-8-1991 by Hon"ble M/s. A.P. Ravani and K.R. Vyas, JJ. Highlighting the relevant material facts, having bearing on the point involved, it was further submitted by the learned Advocates for the petitioners that all the present petitioners, after they came to be detained under Sub-section (2) of Section 3 of the BM Act, they were subsequently temporarily released u/s 15 of the said Act, on parole on the ground of either Diwali festival and/or in some cases, on the ground of their personal illness or illness of their family members and accordingly, as a result, were continuously out of detention for number of days together ! ! ! It was further submitted that this temporary release for as many as seven days together particularly on the ground of Diwali festival was a result of enmassed mechanical orders of parole granted by the State Government exercising powers u/s 15 of the BM Act. It was further pointed out that out of these eight petitioners, two came to be temporarily released on parole, even prior to the issuance of the impugned order of detention passed against them by the concerned Detaining Authorities were approved by the State Government ! ! It was still further pointed out to us that in all these matters, the State Government also temporarily released the petitioners on the ground of illness either to themselves or their family members acting merely on the basis of some medical certificates, straightway accepting the same without making any

indepth inquiry. This method and manner of granting the parole permitting the petitioners to continuously remain out of the detention for number of days together, according to the learned Advocates for the petitioners, clearly indicates that the alleged subjective satisfaction reached by the concerned Detaining Authorities was sham, bogus and not genuine one. According to the learned Advocates for the petitioners, the very fact that the State Government did not feel any embarrassment or difficulty whatsoever in temporarily releasing the petitioners on parole for a number of days together continuously keeping them out of detention in such preventive matters, on the facts of it belies the truthfulness and the genuineness of the subjective satisfaction of the Detaining Authorities to the effect that unless and until the petitioners were immediately detained under the BM Act their remaining out would seriously undermine, prejudice and endanger the maintenance of supply of Essential Commodities to the Community. It was further submitted by the learned Advocates for the petitioners that quite strangely in one breath, the concerned Detaining Authorities claimed to have reached their respective subjective satisfaction that the petitioners were such nefarious black-marketeers that the ordinary laws of land standing by themselves were far too inadequate to control and prevent them from carrying on their black-marketing activities in future and therefore it was necessary to immediately preventively detain them and at the same time, in the next breath, the very State Government which ultimately approved the orders of detention, subsequently, mechanically and quite surprisingly temporarily released the petitioners on the eve of Diwali festival as well as on the grounds of personal as well as their family member's illness continuously for several days together at a time, permitting them to remain out of detention!!! It was further contended that such subsequent illogical exercise of discretionary powers u/s 15 of the Act of temporarily releasing the petitioners on parole continuously for several days together ran counter and were inconsistent with the subjective satisfaction of the concerned Detaining Authority regarding their immediate imperative need and necessity to preventively detain them under provisions of the BM Act. In fact, earlier order of preventive detention under Sub-section (2) of Section 3 of the BM Act and thereafter the order temporarily releasing the petitioners u/s 15 when seen together in the light of the facts and circumstances of these cases, they are quite contradictory in terms, nullifying the subjective satisfaction of the concerned Detaining Authorities for passing the detention order. Further according to the learned Advocate for the petitioners, the aforesaid irreconcilable situation does not simply rest here only, as it was further pointed out that while so temporarily releasing the petitioners on parole, the State Government has imposed about 7 terms and conditions to be complied with by them when they were so temporarily released out of the detention. According to the learned Advocates, if these conditions indeed truly satisfied the State Government that the same would effectively check and control the petitioners and the petitioners also in their turn will obediently comply with the same not indulging into any black-marketing activities in future, then in that case, there indeed was no need to resort to such drastic measures as clamping

down the preventive detention on them. Not only that but each of the petitioners in that case would indeed have been and/or are ready and willing to abide by the said conditions today even. If that is the situation, there was no need as such either to impose or to continue the preventive detention against the petitioners any further. It was further contended by the learned Advocates that the very fact that the State Government was satisfied with these three terms and conditions, that goes to show that if when the impugned orders of detention came to be passed, had those terms and conditions been taken into consideration by the concerned Detaining Authorities, the same perhaps would have tilted the subjective satisfaction in favour of petitioners. Thus, to the said extent, the subjective satisfaction on the said count also stands vitiated rendering the detention orders illegal and unconstitutional. On the basis of the aforesaid submissions, it was finally urged by the learned Advocates for the petitioners that since the facts and circumstances of the present petitions were squarely covered by some of the decisions of this Court, as cited above, these petitions deserves to be allowed, setting the petitioners at liberty forthwith.

5. As against the above, the learned A.P.Ps. appearing for the respondents submitted that the petitioners were merely "temporarily released" and that too only on the grounds of Diwali festival and/or illness of their own or their family members in some cases, and therefore, the exercise of the powers u/s 15 of the BM Act on religious and humanitarian grounds cannot be said to be illegal, bad and fatal which can vitiate the subjective satisfaction of the State Government regarding earlier order or further continued detention. It was further strenuously contended by the learned A.P.Ps. that the wordings of Section 15 of the BM Act were clear enough to indicate that the State Government has unfettered and absolute powers to temporarily release the detenu for just cause pending the detention. In support of this, the learned A.P.P. have invited our attention to Section 15 of the BM Act, which reads as under:

Section 15: Temporary release of persons detained:

(1) The appropriate Government may, at any time, direct that any person detained in pursuance of detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may at any time, cancel his release.

(2) In directing the release of any person under Sub-section (1) the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under Sub-section (1) shall surrender himself at the time and place and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in Sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

(5) If any person released under Sub-section (1) fails to fulfill any of the conditions imposed upon him under the said Sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

Thereafter, our attention was specifically invited to the words, viz., "may be released on any specified period either without conditions or upon such conditions specified in the directions as that person accepts" appearing in Section 15(1) of the BM Act. It was further contended that several decisions relied upon by the petitioners have no relevance whatsoever to the facts and circumstances of the present cases, as they by and large were the cases of free and frequent, callous and indiscreet exercise of powers u/s 15 of the BM Act. It was further submitted by the learned A.P.Ps. that as a matter of fact, the Government has taken a policy decision on humanitarian ground to temporarily release the detenu on any religious festivals like Diwali, Id, Christmas, etc. In support of this, the learned A.P.Ps. have invited our attention to the said guidelines prescribed by the State Government, which reads as under:

GUIDELINES

In pursuance of Section 15 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, the Government may release the detenu from Jail at any time temporarily subject to proper conditions or without conditions. Generally, the applications for parole from the detenu are submitted through Jail or directly. These applications for parole are mainly made on the following grounds:

(1) On the grounds either of personal illness of the detenu or that of his family members.

(2) On personal grounds.

(3) On the grounds either of religious or that of the national festivals,

On the aforesaid grounds, whenever parole applications are made on behalf of the detenu, the same should be considered on the following criteria:

(1) When the detenu makes demands for parole on the ground of their ill-health or sickness of their near relatives, such applications should be accompanied with the medical certificates. If such certificate is not sent therewith, then request for parole may be rejected.

(2) If such certificate is produced from non-Government doctor, then such applications may be forwarded to the District Magistrate for seeking his specific opinion on the point whether parole asked for by the detenu deserves to be sanctioned considering the public interest and seriousness of the disease mentioned in the certificate of sickness produced by him and then only, parole may be sanctioned.

(3) In cases wherein the detenu has produced a certificate from the Medical

Officer of the Government dispensary of the concerned district and a relative of the detenu is admitted as an indoor patient, parole may be sanctioned by this office on the basis of merits considering the seriousness of the disease. But, the opinion of the District Magistrate may be obtained only for the purpose whether it is proper to grant parole to the detenu in view of the public interest.

(4) In cases wherein the detenu have made demands for parole for personal reasons, parole may be sanctioned only after taking opinion of the District Magistrate in view of the public interest.

(5) When the detenu ask for parole on the social or religious occasions, it will be fair and proper to consider the same in the context of public holidays. Important social and religious festivals are as under:

(a) Hindu --Makarsankranti, Maha Shivratri, Holi, Ramnavmi, Raksha Bandhan, Janmashtami, Dashera, Diwali (b) Muslim --Bakari Id, Ide-Milad, Mahoram (c) Christian --Good Friday, Christmas (d) Jain --Samvatsari (e) Sindhi --Cheti Chand (f) Parsi --New Year Day (g) Shikh --Guru Nanak Birthday (h) National Festivals --26th January, 15th August.

(6) Time for parole being granted so far is not fixed. But seven days parole is granted during the period of Diwali festivals and five days parole is granted for the festivals of Janmashtami and Raksha Bandhan. In view of that, time for parole may be fixed as under, however, that time may be increased or decreased by the Secretary.

(i) When demand is made for parole on occasions of the religious, social or national festivals, three days parole may be sanctioned.

(ii) When demand is made for parole during the Diwali festivals, seven days parole may be sanctioned.

It may not be considered essential to obtain opinion of the District Magistrate before sanctioning parole for the aforesaid festivals.

(7) In certain cases, the detenu make requests to sanction parole without deposits because of their weak economic conditions. At this time, as it is necessary to verify this matter, it may be considered to sanction parole without deposit only, after obtaining the opinion of the District Magistrate in that matter.

It was further pointed out by the learned A.P.Ps. that while exercising powers u/s 15 of the BM Act, temporarily releasing the petitioners on parole, the State Government has taken appropriate care to see that while on parole, they do not abuse their liberty in carrying further their alleged black-marketing activities by imposing certain conditions and taking undertakings from them as regards their due compliance. In support of this also, the learned A.P.Ps. have brought to our notice those terms and conditions on the basis of which the petitioners came to be temporarily released. One such specimen of the terms and conditions pertaining to the petitioner-Dilip Amratlal Ganatra was handed over to us. We are

told that other petitioners were also likewise released on the same terms and conditions which read as under:

TERMS AND CONDITIONS

ORDER Food & Civil Supplies Department 14, Sardar Bhavan, 6th Floor, Sachivalaya, GANDHINAGAR. Dated 30th October, 1991. No. PRL/1191/2 72/ Spl: In exercise of the powers conferred by Section 15 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (No. 7 of 1980), the Government of Gujarat, hereby directs that the person known as Shri Dilipkumar Amratlal Ganatra, in respect of whom a Detention Order No. DTN/ECA/10/91, dated 9-9-1991 shall be granted parole to the detenu for a period of 7 days (seven days), i.e., from 4th November, 1991 to 10th November, 1991 on his agreeing to abide by the conditions specified below:

(1) He shall be of good behaviour during the period of his temporary release from his detention (hereinafter referred to as the said period).

(2) He shall not attend to his business nor indulge in any activity which may be prejudicial to the maintenance of supplies of essential commodities during the said period.

(3) During the period, he shall not do directly or indirectly any business in essential commodities nor indulge in any activity which may be prejudicial to maintenance of supplies of essential commodities.

(4) He shall surrender to the Superintendent of the Vadodara Central Jail, Vadodara, on the said period unless his order is cancelled earlier in which he is directed to surrender in the order relating to such cancellation.

(5) He shall be liable to be arrested and detained earlier before the expiry of the said period in the event of non-observance of any of the conditions mentioned hereinabove.

(6) He shall furnish a personal bond of Rs. 10,000/- (Rs. Ten Thousand only) with one surety of equal amount for the due observance of the above conditions failing which, the amount so deposited shall be liable to be forfeited in Government Account.

(7) He shall not leave Rajkot District during the said period. By order and in the name of the Governor of Gujarat,

Sd/- (N.L. Bhatt) Under Secretary to the Govt. of Gujarat Dated at Sachivalaya, Gandhinagar, this 30th day of October, 1991.

It was farther vehemently contended by the learned A.P.Ps. that the petitioners having already taken the advantage of the generous gesture of the Government on humanitarian ground for enjoying festival parole and also in some cases, parole on the ground of their personal or family members' illness, they are not entitled to attack the same on the ground that the subjective satisfaction of the

State Government was vitiated as regards their earlier detention as well as their further continued detention. Further, according to the learned A.P.Ps. such contentions were manifestly illegal, unfair and immoral. The learned A.P.Ps. on the basis of the aforesaid submissions finally urged that on the one hand taking into consideration the seriousness of the allegations regarding black-marketing activities carried out by all the petitioners as alleged in the grounds of detention, and on the other hand, in view of the bona fide exercise of powers and that too on humanitarian ground u/s 15 of the BM Act, no ground was made out to interfere with the impugned order of detention, and therefore, this Court should not quash and set aside the orders of detention.

6. Before appreciating the rival contentions in detail, we at the outset would like to briefly indicate that taking into consideration the consistent view taken by this Court in several of its decisions and in particular the one rendered in Spl. Criminal Application No. 15 of 1991 (supra), in absence of anything further specifically contrary shown to us, by the learned A.P.Ps. against the said decisions, enlightening and satisfying us to take a different view of the matter, we are simply not inclined to accept the submissions made by the learned A.P.Ps. in support of the impugned orders of detention. Accordingly, in our opinion, the relevant facts pertaining to the temporary release of each of the petitioners, as stated above in para-3 of the judgment, on the face of it clearly demonstrates that the discretion exercised by the State Government in the said regard is quite callous and indiscreet, having been exercised in totally unjustifiable manner and on grounds. The net result under the circumstances so far as Special Criminal Application No. 1754 of 1991 and 1755 of 1991 are concerned, since the petitioners therein came to be temporarily released by the State Government much prior to approval of the detention order passed by the Detaining Authority, it vitiated the subjective satisfaction retrospectively. However, as far as the rest of the six Special Criminal Applications are concerned, therein further continued detentions are rendered illegal and unconstitutional because of the said callous and indiscreet exercise of powers. To say on the one hand that but for the preventive detention of the concerned petitioners under BM Act, it was not possible to immediately control and prevent them from carrying on their futuristic black-marketing activities prejudicial to the maintenance of supplies of commodities essential to the community, and immediately thereafter, on the other hand, to temporarily release them (in some cases even prior to approval of detention order by the State Government) at a time continuously for a number of days without any just, emergent, justifiable and indispensable grounds is nothing but the contradiction in terms and travesty of the preventive detention laws. This sort of blowing hot and cold way of exercising the power clearly belies and militates against the subjective satisfaction of the concerned authority vitiating the same rendering further continued detention illegal and unconstitutional. Turning to the facts and circumstances of the present case, it is very clear that the petitioners remained out of detention continuously for several days together as a result of quite casual and indiscreet exercise of powers u/s 15 of the BM Act

by the State Government. This clearly brings the case of the petitioners within the fold of the decision rendered by this Court in Special Criminal Application No. 15 of 1991 (supra) rendering further detention illegal and unconstitutional. As a matter of fact, in our deepest anxiety and concern for the overall social defence against the black-marketing menace and in order to see that such detention orders do not fail in future on the ground of some negligence and indiscreet exercise of powers by the statutory functionary, we had thought it proper to forward a copy of the said judgment to the Secretary, Food & Civil Supplies Department, Government of Gujarat at Gandhinagar. Still, however, to our greatest disappointment, shock and surprise, we in group of these petitions have come to know that the guidelines and the directions given in the said judgments have been given go by in utter ignorance and/or defiance (!) of the same and the eight petitioners have been released by the State Government continuously for a number of days together once again on some unjustifiable grounds and manner risking the fatal consequences of getting the impugned orders of detention as well as the continued detention being declared illegal and unconstitutional! The matter does not rest here as further interesting story is an attempt on the part of the learned APPs. to display the utter innocence of the concerned statutory functionary in this regard by trying to justify the illegal action of enmassed temporary release of the petitioners by telling the Court that they were so temporarily released just on some religious and humanitarian grounds so as to enable them to enjoy Diwali festival as well as in some cases for the medical treatment of themselves or their family members. According to the learned A.P.Ps., such an exercise of discretion u/s 15 of the BM Act cannot be branded callous and indiscreet. Now, this argument of the learned A.P.Ps. have no substance at all. First of all, looking to the preventive object of the BM Act, festival parole is out of question and cannot be justified on any ground. Similarly, the temporary release of the petitioners or their family members on the ground of their illness is also not found to be justifiable on the ground that no indepth and close inquiry and scrutiny is found to have been made regarding the truthfulness and genuineness of the alleged illness and medical certificates produced in support of the same. We feel that the most callous and indiscreet manner in which in the present group of petitions the power u/s 15 of the BM Act once again came to be exercised despite the decision rendered by this Court in Spl. Criminal Application No. 15 of 1991 (supra) and copy was forwarded to the concerned statutory functionary is simply inthinkable and therefore unbelievable!! strangely but tiously somehow the same has happened. This has defused and frustrated the very object of the BM Act and the same stands highly demoralizing not only to the detaining authorities who passed the detection orders. It also sadly reflects upon the efficiency and bona fides of the concerned statutory functionary shaking the very faith of the people in matter of "public administration" and maintenance of "Rule of Law". This apparent act of defiance of this Courts guidelines in Spl. Criminal Application No. 15 of 1991 (supra) by the statutory functionary is, suitably dealt with in the course of the later part of this judgment. In short and in substance, at this stage, it may once again be

stated that since the principle laid down by the Court in Spl. Criminal Appln. No. 15 of 1991 (supra) squarely covers the facts and circumstances of the present group of eight petitions, it is not possible for us to sustain even for a moment any further continuous detention of the petitioners, which deserves to be quashed and set aside at once.

7. Turning back to the contentions raised by the parties, the ultimate controversy in all these petitions appears to be centric; around one point only, namely, that of the interpretation of Section 15 of the BM Act that is to say "whether the temporary release of the petitioners continuously on the ground of Diwali festival and in some cases also on the ground of illness of themselves or that of their family members (without any in-depth inquiry into the truthfulness and genuineness of the medical certificate, seriousness of the illness justifying the temporary release) continuously for seven or more days together, can be said to be legal and valid exercise of the discretion u/s 15 of the BM Act vitiating the subjective satisfaction invalidating the earlier as well as further continuous detention illegal and unconstitutional or not?" Under the circumstances, it is desirable first of all to have a close look at the said Section 15 of the BM Act providing for the temporary release of the detenu and examine and understand its real scope and ambit in context of the ultimate object of the BM Act. Now, undoubtedly, it cannot be denied that when one simply looks at the bare workings of the said Section 15, the first and ordinary impression which it gives out to any one unwary of the preventive object of the BM Act would be that the same vests quite wide and unfettered powers in the State Government to temporarily release the detenu for any number of days one would like, with or without any conditions. It is perhaps because of this first-hand unrealistic impression only that the learned A.P.Ps have been tempted to justify illegal, indiscreet orders of temporarily releasing the detenu on parole continuously for a number of days together, emphasizing, in particular, certain words appearing in Section 15 of the BM Act, namely to quote... "may be released for any specified period either without conditions or upon such conditions specified in the direction as that persons accepts." (emphasis supplied). On carefully scanning and scrutinising the above wordings, it is very clear that the said impression is illusory. The reason is that when one is required to appreciate and interpret particular wordings appearing in the section, the same has always to be appreciated and interpreted in the light and the background of the object and spirit underlying that particular Act. The wordings appearing in the section for that purpose cannot be viewed and examined in isolation diverting from its real context underlying the fundamental object. To read and interpret any section out of the said context and background is just reading it out of the way, which is bound to result into patent injustice. This is simply impermissible and not done. It is the cardinal principle of the interpretation of the statutes that the provisions of the Act has to be interpreted and construed in manner which ultimately serves, protects and enhances the underlying object and spirit of that particular Act and not in any other manner which tends to defuse and frustrate the very

object of the Act, as some how appears to have been done in the instant cases. Accordingly, in order to appreciate and find out the correct meaning of Section 15, it is necessary first of all to have a look at the statfment and the objects of the BM Act, appended to the Bill of Principal Act 7 of 1980 vide Gazette of India, dated "January 25, 1990 Part If (extra page-28) which reads as under:

The Prevention of Blackmarketing and Maintenance of Supplies of the Essential Commodities Ordinance, 1971 was promulgated on the 5th October, 1979 to deal effectively with mal-practices like Black marketing, hoarding, profiteering and to arrest the shnrp rise in prices of essential commodities by providing for the preventive detention of persons indulging and involved in these practices. The Essential Commodities Act, 1955 contains comprehensive provisions for the regulation of production, supply, distribution, prices and trade and commerce in essential commodities. The penal provisions in the Act were made more stringent in accordance with the recommendations of the Law Commission in their Forty-Seventh Report. However, it was felt that the same were not adequate to deal with the situation. The ordinance recognised preventive detention as a necessary evil and accordingly sought to provide for various safeguards to avoid scope for possible abuse of powers thereunder. The grounds on which a person could be detained under the Ordinance have been clearly spelled out. A person can be detained thereunder only with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community.

(Emphasis supplied)

Further, this Court also in the case of Chandravati Fakirchand Zaveri Vs. The State of Gujarat and Another, , while highlighting the object of the BM Act, in para 4 of the judgment, has observed as under:

Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act has been chiselled in order to extend protection to the society from being starved of essential commodities and from being exploited by unscrupulous elements who feel no compunction in indulging in mal-practices unmindful of the resultant miseries of the common man.

Farther still, the question as to what facts as of ineivable necessity must weigh, before releasing the detenu on parole came to be decided by the Supreme Court in case of The State of Bihar Vs. Rambalak Singh and Others, . This was the case wherein the detenu Ram Balak Singh who came to be detained under Rule 30 of the Defence of India Rules, challenged his detention order before the Patna High Court under Article 226 of the Constitution of India, inter alia praying for the bail pending hearing and final disposal of the petition. The High Court granted the bail as prayed for by the detenu Ram Balak Singh. The State of Bihar feeling aggrieved by the impugned order, challenged the same by way of an appeal by Special Leave before the Supreme Court, raising an important question of law, namely, "whether while entertaining the habeas corpus petition under Article 226

of the Constitution filed on behalf of the detenu who came to be detained under Rule 30 of the Defence of India Rules, the High Court had jurisdiction to release the detenu on bail pending final disposal of the said habeas corpus petition. The Supreme Court answering this question in paras 11 and 12 of its judgment at page 1444 has held as under:

(11) In dealing with writ petitions of this character, the Court has naturally to bear in mind the object which is intended to be served by the orders of detention. It is no doubt true that a detenu is detained without a trial, and so, the Courts would inevitably be anxious to protect the individual liberty of the citizen on grounds which are justiciable and within the limits of their jurisdiction. But in upholding the claim for individual liberty within the limits permitted by law, it would be unwise to ignore the object which the orders of detention are intended to serve. An unwise decision granting bail to a party may lead to consequences which are prejudicial to the interests of the community at large, and that is a factor which must be duly weighed by the High Court before it decides to grant bail to a detenu in such proceedings. We are free to confess that we have not come across cases where bail has been granted in habeas corpus proceedings directed against orders of detention under Rule 30 of the Rules, and we apprehend that the reluctance of the Courts to pass orders of bail in such proceedings is obviously based on the fact that they are fully conscious of the difficulties legal and Constitutional and of the other risks involved in making such orders. Attempts are always made by the Courts to deal with such applications expeditiously, and in actual practice, it would be very difficult to come across a case where without a full enquiry and trial of the grounds on which the order of detention is challenged by the detenu, it would be reasonably possible or permissible to try Court to grant bail on prime facie conclusion reached by it at an earlier stage of the proceedings.

(12) If an order of Bail is made by the Court without a full trial of the issues involved merely on prima facie opinion formed by the High Court, the said order would be open to the challenge that it is the result of improper exercise of jurisdiction. It is essential to bear in mind the distinction between the existence of Jurisdiction and Its proper exercise. Improper exercise of jurisdiction in such matters must necessarily be avoided by the Courts in dealing with the applications of this character. Therefore, on the point raised by the learned Advocate General in the present appeal, our conclusion is that in dealing under Article 226 Of the Constitution where orders of detention passed under Rule 30 of the Rules are challenged, the High Court has jurisdiction to grant bail, but the exercise of the said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed Under the said Rules.

Similarly, while highlighting in detail the true import of Section 12 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,

1974 which pertains to "temporary release" of the detenu, the Supreme Court in the case of Pushpadevi M. Jatia v. M.L. Wadhvan, Additional Secretary, Government of India, reported in : 1987CriLJ1888 has in para 13 of its judgment observed as under!

13. In addition to the reasons given therein, we may add the following by way of supplementary material. Though the element of detention is a common factor in cases of preventive detention as well as punitive detention, there is a vast difference in their objective. Punitive detention follows a sentence awarded to an offender for proven charges in a trial by way of punishment and has in it the elements of retribution, deterrence, correctional factor and institutional treatment in varying degrees. On the contrary, preventive detention is an extra-ordinary measure resorted to by the State on account of compulsive factors pertaining to maintenance of public order, safety of public life and the welfare of the economy of the country. The need for this extra-ordinary measure, i.e., detention without trial was realised by the founding fathers of the Constitution as an inevitable necessity for safe guarding the interests of the public and the country and hence a specific provision has been made in Clause (3) of Article 22 providing for preventive detention being imposed in appropriate cases notwithstanding the fundamental right of freedom and liberty guaranteed to the citizens by the Constitution. The entire scheme of preventive detention is based on the bounden duty of the State to safeguard the interests of the country and the welfare of the people from the canker of Anti-national activities by Anti-social elements affecting the maintenance of public order or the economic welfare of the country. Placing the interests of the nation above the individual liberty of the Anti-social and dangerous elements who constitute a grave menace to society by their unlawful acts, the preventive detention laws have been made for effectively keeping out of circulation the detenus during a prescribed period by means of preventive detention. The objective underlying preventive detention cannot be achieved or fulfilled if the detenu is granted parole and brought out of detention. Even if any conditions are imposed with a view to restrict the movements of the detenu while on parole, the observance of those conditions can never lead to an equation of the period of parole with the period of detention. One need not look far off to see the reason because the observance of the conditions of parole, wherever imposed, such as reporting daily or periodically before a designated authority, residing in a particular town or city, travelling within prescribed limits alone and not going beyond etc., will not prevent the detenu from moving around acting as a free agent during the rest of the time or within the circumscribed limits of travel and having full scope and opportunity to meet people of his choice and have dealings with them, to correspond with one and all to have easy and effective communication with whomsoever he likes through telephone, telex etc. Due to the spectacular achievement in modern communication system, a detenu, while on parole, can sit in a room in a house or hotel and have contacts with all his relations and confederates in any part of the country or even any part of the world and thereby pursue his unlawful activities if so inclined. It will

therefore be futile to contend that the period of parole of a detenu has all the trappings of actual detention in prison and as such both the periods should find a natural merger and they stand detained of their distinctive characteristics. Any view to the contrary would not only be opposed to realities but would defeat the very purpose of preventive detention and would also lead to making a mockery of the preventive detention laws enacted by the Centre or the States it will not be out of place to point out here that in spite of the Criminal Procedure Code providing for release of the convicted offenders on probation of good conduct, it expressly provides, when it comes to a question of giving set-off to a convicted person in the period of sentence, that only the actual pre-trial detention period should count for set-off and not the period of bail even if bail had been granted subject to stringent conditions. In contrast, in so far as preventive detentions under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, are concerned, the Act specifically lays down that a person against whom an order of detention has been passed shall not be released on bail or bail bond or otherwise (vide Section 12(6) of the Act) and that any revocation or modification of the order of detention can be made only by the Government in exercise of its powers u/s 11. Incidentally, it may be pointed out that by reason of Sub-section (6) of Section 12 of the Act placing an embargo on the grant of bail to a detenu there was no necessity for the legislature to make a provision similar to Sub-section (4) of Section 389 of the Code of Criminal Procedure, 1973 (corresponding to Sub-section (3) of Section 426 of the old Code) for excluding the period of bail from the term of detention period. For these reasons, the plea for treating the period of parole as part of the detention period has to be necessarily fail.

8. Now, in the light and back-drop of the aforesaid discussion, which in unmistakable terms spells and points out the correct direction in which the State Government was ordinarily expected to exercise its extraordinary discretionary powers u/s 15 of the BM Act, at the time of temporarily releasing the anti-social detenus on parole, let us further examine the relevant wordings of the said Section 15 dealing with 3 important aspects on which the learned A.P.Ps. have laid heavy emphasis. They are:

(i) "without condition", (ii) "upon such condition", and (iii) "for any specified period". Accordingly, therefore, what then is the correct meaning of the first aspect, viz., "upon such condition"? Now when Section 15 of the BM Act lays down that the detenu can be released "without condition" that situation would come into operation only when there indeed is no necessity to impose any condition at all while temporarily releasing the detenu on parole. Take for example, a situation wherein a close relative of the detenu has been removed to hospital for some serious operation and/or is on the death-bed or has been dead taken to the cremation ground and that the detenu wants to attend such occasion for a limited period and purpose, and if, the concerned authority, in turn deems it proper to temporarily release the detenu on parole under police escort and surveillance, in that case, there may not arise any necessity to impose any

condition. Under such circumstances, the detenu certainly can be temporarily released without any condition being imposed upon him, and that is the reason why the wordings "without condition" appears to have been drafted in in the said Section 15 of the BM Act. This is the only reasonable way how the said wordings "without condition" can be looked at and are needed to be appreciated, interpreted and understood. Thus, these wordings "without condition" in our opinion do not vest any unfettered, absolute and arbitrary power in the State Government while temporarily releasing the detenu u/s 15 of the BM Act. Similarly, when it is stipulated in Section 15 of the BM Act that a detenu may be temporarily released "upon such condition" the nature of the said conditions should be obviously stringent enough to take care of the preventive object of the BM Act by clipping the wings of the detenu as much as possible to keep him out of the harm's way frustrating the social defence disturbing the supplies of the commodities essential to the community. Accordingly, the said wordings "upon such condition" can never be stretched to the illogical extent as has been done in cases under the present group of petitions while imposing the terms and conditions at the time of releasing the petitioners on parole for number of days together. In fact, mere look at those terms and conditions reproduced in above para 5 of this judgment clearly shows that there is not even a semblance or shadow of the preventive object present in the said terms and conditions!! In this view of the matter, standing by the themselves, the said terms and conditions in absence of any other and further stringent terms and conditions like providing for the active surveillance over the detenu during the time of temporary release or for that purpose any other such terms and conditions which can keep the detenu out of harms way, they appear to be just illusory and self-defecting only. It is indeed quite surprising and shocking too as to how the Authorities can become so gullible as to believe and accept the aforesaid terms and conditions as sufficient to ensure that the petitioners will not repeat alleged black-marketing activities during the period when they are out of detention! Thus, in our opinion, the expression "upon such condition" necessarily means only such conditions which are stiingent enough to take desired care to safeguard and protect the preventive object of the social defence underlying the BM Act and not any other terms and conditions, which are just in names only, without any effect in substance. Similarly, further, when the Legislature has used the wording "for any specified period" in Section 15 that also do not and can never be permitted to mean that the detenu can be released for any number of days as the statutory functionary arbitrarily decides, as the specified period must co-relate to the object of the Act as well as to the gravity, emergency, and the requirement of the situation, for which the temporary release is prayed for. In other words, when the detenu prays for any temporary release and if the ground in support of the same is madeout, the same should be granted on the basis of the exact necessity and requirement of the detenu for that particular occasion -neither less nor more, the situation is such where temporary release for few hours is enough, the detenu deserves to be temporarily released for that much duration only and for no more further period. Similarly, if the requirement is for a period of one or two days,

that much number of day(s) are to be granted and not more than that. The word "any" appearing in "for any specified period" therefore does not mean "for any number of days" but as stated above, the same relates to the exact requirement of the cause and occasion for which the same is prayed for. Thus, it is not correct to say as asserted by the learned A.P.Ps., that Section 15 of the BM Act gives wide and unfettered powers to the State Government to temporarily release the detenu for any number of days on any flimsy and unjustifiable excuses/grounds or on any light terms and conditions as such an irrational interpretation of the section counter-acts and frustrates the very object and spirit of the social defence for which the BM Act came to be enacted. In our opinion, this being the correct position of law, while exercising powers u/s 15 of the BM Act for temporarily releasing the detenu, the authority concerned is expected to first of all appreciate that the detention clamped down on the detenu was by way of "preventive measure". Thereafter, it was further expected to him to ask its conscience the following question, viz., (i) Whether the grounds on which the temporary release prayed for is a genuine one or merely a ruse? (ii) Whether despite the same being genuine one, the same was just, emergent and extra-ordinary enough wherein the temporary release is indispensable? After obtaining answers to these two questions, if the Authority concerned feels that some genuine case is made out for the favourable exercise of discretion in favour of the detenu for his temporary release, then thereafter even, two more questions are still further required to be carefully considered and taken care of before finally granting the temporary release. They are: (i) as to for what minimum possible period only the detenu deserves to be kept out of the prison so that by chance even remotely he does not abuse his said release sabotaging the overall object of the social defence under the BM Act; and (ii) what sort of stringent conditions need to be further imposed upon such detenu which can clip his wings in order to keep him out of the harm's way? These and only these are the safeguards and/or the tests, consideration, on the basis of which the statutory functionary can legitimately exercise its discretion while temporarily releasing the detenu on parole. It should indeed be a matter of common sense that discretion u/s 15 of the BM Act for temporary release can never be lightly exercised in a manner which is derogatory to the main object of the BM Act, which ultimately vitiates and thereby negatives and frustrates the subjective satisfaction of the State taking the detenu under the preventive detention. If such special care is not taken, then depending upon the facts and circumstances of that particular case, the obvious conclusion that would follow would be either (i) a colourable mala fide or corrupt exercise of power, or (ii) the negligence and/or (iii) utter ignorance of the concerned statutory functionary as to how such extra-ordinary powers under such an extra-ordinary statute are to be exercised.

9. That takes us to yet further and one more important aspect of the indiscreet and thereby impermissible exercise of the discretionary power of releasing the petitioners u/s 15 of the BM Act whereby we find that the State Government has; as if super-imposing itself upon the preventive object underlying the BM Act,

framed certain inconsistent and incomplete guidelines (reference para 5; above) for the purpose of temporary release of the detenu on parole. In this regard, as could be seen in para 5 of this judgment, the State Government has broadly classified three categories on the basis of which the detenu may apply for his temporary release on parole u/s 15 of the BM Act. They are (i) on the ground either of personal illness of the detenu himself or that of his family members, (ii) on personal grounds, and (iii) on the ground of religious or that of national festivals. The State Government has also laid down some rough and ready procedure on the basis of which application for temporary release on any of the aforesaid grounds could be made. Thus, turning to the ground No. (i) namely that the application for parole can be granted on the ground of either personal illness of the detenu or that of his family members, the simple procedure laid down is that the same can be granted if the application is accompanied with medical certificate. Now, it may be stated that so far as the temporary release of the detenu on the ground of his personal illness or that of his family member's is concerned, that certainly may not be said to be an unreasonable ground to which any exception can be taken. However, at the same time, taking into consideration the preventive object of the BM Act, a very loose procedure prescribed for granting parole by merely asking to produce a medical certificate only without providing for further indepth inquiry and close scrutiny into the genuineness and seriousness of the illness, the same being incomplete in itself is bound to be abused, setting at naught the very preventive object of the BM Act. One may like it or not, but it has become hard fact of life these days where we often find that it is not difficult to procure bogus medical certificates which can be abused easily to dupe the authorities in obtaining temporary release on false, fabricated medical ground. Thus, as stated above, no doubt in a grave and just case, illness may be a good ground u/s 15 of the BM Act for temporarily releasing the detenu but at the same time, the statutory functionary cannot afford itself to be that gullible and live in child-like world by accepting the medical certificate, as it is, at its face value for temporary release of the detenu without making any honest, sincere and indepth inquiry regarding genuineness and truthfulness of the same. In order to guard against such an eventuality, the application for temporary release should be made on (i) appropriate affidavit of the applicants, (ii) supported by the medical certificate of registered qualified Medical Practitioner, (iii) supported further by an affidavit of the Doctor himself issuing the medical certificate, (iv) further subjected to an indepth inquiry and close; scrutiny of the same as regards its genuineness and truthfulness as well as gravity and seriousness of the alleged illness, on the lines suggested by this Court in case of *Ala Ramji v. State of Gujarat and Ors.*, reported in 1991 (2) GLR 722. The relevant paragraphs of which are reproduced as under:

No Court or any authority should take upon itself the risk of accepting and relying upon such defective Medical Certificate till the time it is duly verified and found to be correct. Granting of a Medical Certificate by the Doctor is an act of serious responsibility. In fact in Modis text book or "Medical Jurisprudence and

Toxicology," a very important instruction has been imparted to Doctor while issuing the Medical Certificate. According to Or. Modi-These are the simplest forms of documentary evidence and generally refer ill-health, soundness of mind, death, etc. These Certificates should not be given lightly or carelessly, but with a due sense of responsibility for the opinion expressed in them. They are not accepted in a Court of law unless they are granted by a duly qualified Medical Practitioner, who is registered under the State Medical Council Act In giving a Certificate of ill-health a Medical Practitioner should mention the exact nature of the illness and preface-by should take, at the bottom of the Certificate, the thumb mark impression or signature of the individual to whom it refers. Dr. Modi has also prescribed a specimen form of such Medical Certificate in Appendix "II" of the said book, the said form reads as under

This is to certify that Mr. ...aged about...years, bearing following identification marks has been examined by me this day and I find that he is suffering from...He is advised to take rest for a period of

Identification 1. marks

2. Signature & Reg. No. of the Doctor Place: Date: 5(2). further, in order to be still little more exact regarding the identity of the sick person in whose respect the Medical Certificate is to be issued, a. photo of such sick person duly signed by the Doctor can be insisted upon (of course, it is for the authorities concerned to decide by framing the necessary rule regarding the same). The idea is that at any cost, the rot that has entered in submitting bogus Certificate must be checked, in fact, the Jail authorities should inform all prisoners in Jail that the Medical Certificate will not be considered complete unless it complies with in the form suggested above.

5(3) In our opinion, the Medical Certificate in order to command even the prima facie credibility, must comply with the aforesaid instructions of Dr. Modi.

6. After passing the above prima facie credibility test, the Medical Certificate has till one more reliability test to undergo before it can be safely accepted and relied upon. Accordingly, whenever any Medical Certificate is produced to press in service for obtaining orders in matters of parole leave or bail, the proper officer has to make further inquiry by contacting the Doctor concerned who is stated to have issued the Medical Certificate in question. The concerned Doctor should be asked (i) whether the Certificate in question has been issued by him; (ii) whether he can identify the person in whose favour such Certificate was issued. Despite these questions and answers, if sonic lingering doubts about the truthfulness of the Certificate still persists, then the Inquiry Officer should not feel helpless to ask the Doctor: (i) to show the indoor-patient register; (ii) the counter-foils of fees receipt and/or any other Medical service charges and/or advance Hospitalization charges, etc., (iii) the treatment chart of the person concerned maintained in the Hospital;

(iv) and if the inquiry is made immediately, to see whether the sick person so

named in the Certificate is actually present in the Hospital; (v) the last but not the least, to personally see such sick person, record his statement, ask for the Medicines prescription given by the Doctor and the bills regarding the medicines prescription given by the Doctor and the bills regarding the medicines he purchased etc. It is this final report on the basis of which such Medical Certificate can either be accepted or rejected. Such inauiries should be prompt and at the D.S.P. level so that other side do not frustrate the same by "doing the needful". The reason behind verification counter-checking of the Medical Certificate is these days all possibilities of same being false, forged and fabricated cannot be ruled out. and the reason for indepth inquiry on the lines suggested above, is that any slackness in lightly accepting the Medical Certificate is fraught with grave danger particularly in cases where the same is produced in support of parole leave or bail application. Any slackness in duty and vigilance in the matter has all the potentialities to play with the life, law and order of the society.

6(1) Therefore, for proper maintenance of law and order and further with a view to see that no peison involved in serious offences escape from the prison by playing with the sentiments and sympathy of the authorities on the ground of false illness of family members, operation etc. on the basis of bogus Medical Certificates, insistance upon fool-proof Medical Certificates on the lines suggested above are desirable.

10. This may still be further tested by referring the patient to the Civil surgeon to obtain his final report. This procedure, no doubt, is litle hard one but at the same time, the strictness it contains is the only guarantee against any false medical certificates being abused by the detenu who once having been found himself to be preventively detained will certainly not spare any effort to get himself out of prison on any count at any cost! One such comparatively easier approach, method would be to feign out some false illness, obtain a bogus medical certificate which is not difficult to obtain and then to get out of the clutches of the law and the detenticn. Invoking sympathy on the ground of some illness is appealing to the heart which is psrhapi quite easier then to obtain release by appealing to the head of the authorities where the application is more often than not likely to fail. Accordingly, it is at the door step of this "heart" that the authorities shall have to mairtain constant vigilance to sec that under no islear disguise of some sympathy, detenu does not get in and get away with the temporary release order. Similarly also, the temporary release on the ground of religious or that of the national festivals is also undoubtedly illegal and unjust. It is difficult to conceive the reasonableness of the rational behind the anti-social black-marketeers to be temporarily released on the ground of religious or national festivals!! Once we take into consideration the preventive object of the preventive detention under the BM Act, such festival paroles can never be granted by any stretch of imagination. The very idea to release the detenu on religious or national festivals simply shows that She statutory functionasks do not know even the A B C of the jurisprudence of the preventive detention law. Apart this, we are clearly of the opinion that these scheming, unscrupulous anti-

socials/black-marketeers who dare play foul and havoc with the public distribution system of the commodities essential to the community and disturb even the regular daily bread of a common man, have neither any moral nor legal right to claim and enjoy religious and/or national festivals either on religious or on humanitarian grounds. The very fact that the detaining authorities were constrained to preventively detain the petitioners without any trial on face of it shows that they were ceased to have any human heart to be called "human being". When such is the situation, the petitioners who are black-marketeers have nothing to do with the religion or humanitarian aspect to be encashed by way of sympathy even from the State Government, to be temporarily released on parole. For any citizen, in any country, to be called himself a truly religious, there is only one religion and that is universal religion of humanism which is known for its virtues like truth, non-violence, service, sacrifice, mercy, co-operation and love and die for the cause of follow human being. In any case, no religion permits any person to fleece, plunder and exploit the fellow brothers and thrive at their cost. Thus, a person having none of the above human qualities and is simply exploiter, does not belong to humanity or any religion and no religion worth the name would ever even think of owning and admitting him in its fold to defile itself! Apart this, can we ever with the slightest of the common-sense, be oblivious of the fact that these greedy black-marketeers who are shrewd and scheming enough to cany on their most henious black-marketing activities subsily and clandestinely, any time what ought we know would not any time even under the clever cover of religious or national festival and/or on some feigned ground of illness will once again play foul with the maintenance of supplies of conmodities essential to the community? Thus, we having closely scrutinized and examined the relevant guidelines prescribed by the State Government to temporarily release the detenu on religious and/or national festivals as well as on the ground of alleged illness of the petitioner himself or his family members as well as the terms and conditions on which he may ultimately be released on parole, are sorry to say that they are simply too general taking no special care of the preventive object of the social defence underlying the BM Act. Such guidelines and the terms and conditions for the said temporary release as discussed above, appears to be more or less an eye-wash and demonstrate utter ignorance of the preventive object underlying the BM Act. The only guidelines on the basis of which the detenu can be temporarily released on parole are the one just discussed and set-out by us in the earlier paragraphs of this judgment. It may also be pointed out that there is no special enabling provisions anywhere under the BM. Act empowering the State Government to frame any such rules as has been framed in the instant cases. Further, even the department for the benefit of its internal working also cannot frame any such rules and guidelines which run counter to the preventive object of the Act. Thus, we on carefully screening and scrutinising the said guidelines find that to release any detenu on parole on the eve of religious festival is simply unauthorised, inconsistent and self-destructive to the very object of the BM Act. Further, so far as the guidelines regarding temporary release of the detenu in matter of illness of himself and/or

of his family members is concerned, the same appears to be quite incomplete inasmuch as in absence of some tuither guidelines as regards the close scrutiny and indepth inquiry in the matter of finding out truthfulness and genuineness of the medical certificate, the Statutory functionary is likely to be mislead and commit some mistake. Under the circumstances, we undoubtedly owe special duty to the people in at once declaring the said guidelines ultra vires, illegal and accordingly hereby order to strike them down and set aside. We may clarify that so far as the temporary release of the detenu on the ground of illness of his detenu himself or of his family member is concerned, that may be good ground, but, then the powers in the said regard has to be exercised with great care and circumspection, closely scrutinizing the medical certificates as regards its genuineness and truthfulness, by holding appropriate inquiry. We event at the cost of repetition would like to reiterate that the only guidelines under which the discretion to temporary release the detenu u/s 15 of the BM Act can be rationally exercised is the one just described by us in earlier paragraphs of this judgment. It should never be forgotten that the powers vested in the State Government u/s 15 of the BM Act to "temporary release" the detenu on parole is an extraordinary power which has to be exercised quite sparingly, bearing in mind (i) the overall preventive object of the said Act, (ii) detenu making out equally special case of the just and indispensable circumstances for obtaining temporary release, and (iii) the necessity of testing and verifying the genuineness and truthfulness of the grounds in support of the temporary release by making an indepth scrutiny and inquiry.

11. Something more. These matters unfortunately do not simply rest here with the appreciation and interpretation of Section 15 of the BM Act, as with great regret, we are constrained to observe something further. Earlier to, the present group of these petitions, in Special Criminal Application No. 15 of 1991 (supra) this Court had also an occasion to deal with the similar question of "temporary release" of the detenu on the basis of some medical certificates, wherein the State Government without making any indepth inquiry and verifying the truthfulness and genuineness of the same and the seriousness of the illness, granted parole and as a result of which, the detenu remained out of the detention continuously for about 30 (thirty) days. While striking down the said detention order, it was observed that the power exercised by the State Government u/s 15 of the BM Act was quite callous and indiscreet inasmuch as no efforts were made to make any indepth inquiry into the truthfulness and genuineness of the medical certificate, on the basis of which, the parole was sought for and granted. Accordingly, it was held in that case that by allowing the detenu to remain out of the detention continuously for about 30 days, the same clearly stood self-contradictory to the subjective satisfaction of the State Government of its immediate necessity to preventively detain the detenu-which in turn was arrived at on the basis of the authorities feeling satisfied that the ordinary laws of the land were far too inadequate to stop him immediately from carrying further his futuristic black-marketing activities prejudicial to the

maintenance of supplies of essential commodities to the people. Further, specially bearing in mind, the overall "public interest" and the suffering of the millions of common men waiting in queue indefinitely for long hours for getting their daily essential commodities and even thereafter, many a tiroes, returning home frustrated without getting the same, and further, still with a view to see that the State Government also in its turn, in future, unwillingly even do not become a victim and easy prey to such trickeries of the detenu under the BM Act (who by securing temporary release invoking the sympathy of the State Government on the ground of feigned illness and thereafter quite brazen facedly turning around traping it into an unsurmountable situation alleging that its subjective satisfaction stood vitiated rendering further continued detention illegal), this Court had forwarded a copy of the judgment rendered in said Special Criminal Application No. 15 of 1991 (supra) to the Secretary, Home Department and the Secretary, Civil Supplies Department, Sachivalaya, Gardbinagar, expressing the hope to the effect that due attention will be paid to the observations made in the said judgment. Not only that hut before parting with the said judgment, serious concern was also voiced in the following paragraphs:

While parting, it may be stated that we would be just failing in our duly it" we do not deprecate the callous and indiscreet manner in which the concerned authority has misused the power u/s 15 of the Act while temporarily releasing the detenu on parole. In fact, the record reflects a very cursory treatment of the extraordinary but socially beneficial legislation like the Black-Marketing Act, 1980 by an unwarranted liberty taken by no less an authority than the Executive which is expected to enforce the law. It cannot be forgotten that the black-marketing activities are while colour offences and are carried out quite ingeniously and clandestinely and are difficult to be easily detected. Under the circumstances, to release the suspect of nefarious social activities like black-marketing, quite freely and frequently on mere asking for a long duration without any vigil or surveillance over such detenu and that too against the objection from the detaining authority is not only demoralising to the said authority, but the same can as well frustrate the very purpose for which the detention order came to be passed. Not only that but such frequent temporary release on parole and that too without due care and circumspection blunis out the impact and efficacy of the deterrent potentiality, the same also lowers the esteem of the detention law. If u/ s 16 of the Act, for any action taken in good faith, the authorities can be protected, some similar sort of provisions are also required to be made in the statute in the overall interest of the society as well as for the larger public interest for whose interest and benefit such statutes came to be enacted, which can check and control the misuse and abuse of the power by the authorities as has been done in the instant case. Unless some sort of personal accountability in the matter of abuse and misuse of powers is incorporated in the statute, the statute itself as well as the liberty of innocent citizen and the overall public interest would get victimized at the altr of whims, caprise and abuse of the powers. In order to see that the law is not diverted to its aim of fulfilling its

objective of social justice and is not misdirected in the direction of abuse and mis-use of power, some reasonable safeguards are required to be incorporated in the statute itself. We do not for a moment suggest that the detenu cannot be temporarily released on parole in genuine cases. What we say is that such powers are to be sparingly and most judiciously exercised as far as possible for some hours, or for a day or few days, as the case may be, depending upon the need and urgency of the situation and that too under the active surveillance of the vigilance officer. Taking into consideration the anxiety of the legislation in passing such an extra-ordinary statute, where the liberty of the citizen can be curtailed even without trial, the seriousness cannot be afforded to be lost sight of by the executives by permitting it to indulge into free-lance dolling out of the parole. The reason is that under no circumstances, the object for which the detenu came to be detained should be laid low under some devices of the detenu resulting into greater disadvantage to the public interest.

It is hoped that due attention will be paid to the observations made above. Office is directed to send copies of this judgment to (i) the Secretary, Home Department and (ii) the Secretary, Civil Supplies Department, for information and necessary action as deemed fit.

It appears that despite the copy of aforesaid judgment was sent to the concerned statutory functionary long back and quite prior to the impugned orders of detention came to be passed in group of these matters, yet for the reasons best known to it, the same has been unfortunately conveniently ignored!! This insensitivity, to say the least, is indeed a very serious thing and with the maximum judicial restraint at our command, we may just warn and sound alert to all the concerned that such a blatant defiance of the High Court judgment is not only not in good taste but the same is fraught with very grave risk inviting severe legal consequences, over and above other departmental (misconduct) proceedings under the relevant service rules. At this stage, the learned A.RPs. appearing for the respondents submitted that there indeed was not and can never be any question on the part of the concerned statutory functionary who is the State Officer of the highest class viz; the Secretary of Food & Civil Supplies Department, for not complying with and thereby ignoring and dishonouring the benevolent observations and directions given in public interest by this Court in the judgment rendered in Spl. Criminal Application No. 15 of 1991 (supra) which all concerned indeed hold it in the highest esteem. It was further submitted by the learned A.P.Ps. that may be due to some honest, bona fide communication gap or some inadvertant mistake, things somehow appears to have gone out of the sight but there certainly cannot and was not any question of deliberately disregarding the observations made by this Court in above judgment. The learned A.P.Ps. accordingly further assured us that in order that such an unfortunate thing, as far as possible, does not happen in future, a relevant decision rendered in Spl. Criminal Application No. 15 of 1991 (supra) as well as the one that Would be rendered in the present matter would be at once brought to the notice of the concerned authorities for needful compliance. These

submissions and assurance of the learned A.P.Ps. we have no reason to doubt and therefore, we accept it, sincerely hoping and believing that the desired care would be taken to see that what unfortunately has happened in the instant cases would not be repeated in future. However, at the same time we may also make it absolutely clear as to what could be resultant consequences of a wilful blatant defiance of the Orders and directions given by this Court touching upon the observance and respect for the law in the matters of wide spread day-to-day chronic sufferings of the helpless poor common men. At this stage, it will not be out of place if we may also incidentally mention that in a number of detention matters, we are noticing many such blatant defiances, despite clear-cut guidelines given by the Supreme Court as well as the High Court in several of its decisions pointing out as to (i) how the extra-ordinary powers under the Preventive Detention Laws are to be exercised bearing in mind the overall social defence and the liberty of a common man, (ii) what care needs to be taken to protect the procedural safeguards in order to sustain the orders of detention; (iii) how the discretion in the matters of temporarily releasing the detenu on parole is to be exercised by making what indepth inquiries, etc. etc., and yet the same are just found to be conveniently ignored in a number of cases with absolute impunity frustrating the very purpose of the social defence for which the particular detention law came to be enacted by the Legislature. We indeed feel that but for the sheer remissness on the part of the concerned statutory functionary, the orders of detention just would not-fall. It is really unfortunate that the concern, care and anxiety as well as the wisdom and pragmatism with which the Legislature enacts such extraordinary pieces of Legislation like the Preventive Detention Laws, to protect the society from the anti-socials (which cannot be otherwise prevented from by the ordinary laws of the land) are just rendered totally defined and nullified because of the sheer remissness on the part of the concerned statutory functionary ! What greater misfortune there could ever be for the people of this country when despite the legislature taking best of its care in enacting special statutes, the same are not enforced same zeal and zest. The obvious question that may arise under such circumstances is,-Is it not the duty of the State Government to decide some special effective measures to check and control and thereby put the defaulting statutory functionary on the right track by entrusting this particular aspect to some such high power administrative cell, as not doing the same may seriously undermine our system of "Rule of Law".

12. The object of the law while enacting it is to govern and regulate the relations inter se between a person and the person, person and the group of persons, and the person and the State, to redress grievance and deliver justice amongst them. If at any point of time, any one of these being found to be violating the Law, injuring other's rights then proceedings are taken up against the concerned law-breaker(s) and are held guilty and punished, if proved so. This is done with a view to remind him of the fact that he has committed breach of his duty towards his fellow-men, which is not permissible and that he should refrain from doing so

in future. Accordingly, in order that such mistakes are not repeated in future, he is suitably admonished or punished. Similarly also, when any statutory functionary entrusted with certain public duties, either deliberately or due to some avoidable negligence commits some default in discharging the same and further, as a result of which, not only the spirit and the object of the law comes to be violated but the society as a whole has also to consequentially suffer because of alleged lapse, such statutory functionary stands not only guilty but it perhaps stand more guilty than the ordinary person for whom the law in question came to be enacted. It should not be forgotten that more than any breach of observance of law by any individual member of the society, the dereliction of duty is offence under the particular statute on the part of law enforcing agency in not effectively implementing and thereby defusing and defeating the very purpose of the said law. We all know that some offence under the provisions of the Food Adulteration Act, 1955 under Sections 279 and 304A of the I.P.C. for rash and negligent driving or of non-compliance of certain rules and regulations under the provisions of various labour legislations like Minimum Wages Act, Factories Act, Employees P.F. Act, etc. and the Essential Commodities Act, 1955, etc., the law-breakers (citizen) even for their little negligence and a small violation and sometimes even on a technical grounds only, are held accountable and ultimately punished. If that is the situation, the statutory functionary who is supposed to be highly qualified paid public servant who is specially entrusted with the enforcement and implementation of the particular law and more particularly entrusted with the maintenance of the "law and order", "public order" and/or "supplies of essential commodities to the community" in the society, if he is found to have committed certain avoidable defaults in discharge of his duties and obligations under the law and towards the people, which cannot be said to be bona fide, in that case, he also stands accountable and on proof of the deliberate defiance or of the same, undoubtedly deserves to be duly punished. So far as the bona fide error is concerned, the same is quite understandable and, therefore, can be pardoned but when one find that the alleged breach of duty is not in "good faith" but suffers from such a patent negligence which exposes the society to the menace of the black-marketing and/or any other disturbance of the "law and order" and "public order", the concerned statutory authority has to necessarily account for the same and face the consequences, if so warranted. We do not even for a moment suggest that there is no scope for any bona fide and genuine mistake being committed by some inadvertence by the concerned statutory functionary. The statutory functionary is also as much a human being. To err is human and to this principle, there is no exception. Accordingly, the statutory functionary in a given set of circumstances may claim legitimate protection if the action or the decision taken by it is bona fide and in a "good faith". Now this term "good faith" requires to be clearly understood. The term "good faith" has been, defined in Section 52 of the I.P.C. which reads as "Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention (emphasis supplied). This definition of "good faith" is thus clear enough to enable anybody as to find

out whether any particular action or decision taken by any person or authority was in a "good faith" or not. In short, the test prescribed for "good faith" is to find out whether particular thing is done or believed with "due care and attention" or not. For example if in the initial state when a particular Act came into force, while putting the same into operation, if some bona fide mistakes are committed by the concerned statutory functionary then that is quite understandable and it can well fall within the purview of "good faith". But as against that, if subsequently thereafter, after gaining the necessary working experience of that particular law, if the same is not attended with due care and attention and cases fail one after another on the same count of avoidable mistakes only, the defence of "good faith" could certainly not be available to the concerned authority. Now, turning to the facts of the present case, the BM Act came into force as far back as in the year 1980. Thereafter, the same has been tested out for all these 12 years before various High Courts and the Supreme Court, and as a result, in several decisions the avoidable pitfalls where the detention orders failed have been clearly spotted out, red-signalled and some guidelines given indicating as to how the detention orders or any other orders under the BM Act could be saved and made failure proof. Now, despite all these things, if the statutory functionary just refuses to learn and become wiser from the events and experience then to that extent, the plea of "good faith" just would not be available to him.

13. Thus, whether in a given case, the statutory power has been exercised with due care, caution or circumspection or not, is the only foundation and the touchstone on the basis of which the cases of bona fide or absence of the same has to be decided ultimately also for the purposes of determining the service career of any such negligent, defaulting statutory functionary. This is the only way in which allegedly erring statutory functionaries could be checked and controlled, otherwise, there appears to be no other way to check and control the ever worsening situation in matter of implementing and enforcing the law to the effect that despite numerous beneficial statutes, people just go on being deprived of the same firstly by the ordinary offenders of the law and secondly by the Statutory functionaries ! ! It has got to be borne in mind that any inaction and remissness of the statutory functionary is the direct and immediate threat to the system of "Rule of Law" as it aborts law before it can deliver justice.

13.1. In the background of the facts and circumstances of the instant cases, just discussed above, the obvious question that arises for our consideration is "whether the Court once having witnessed before its own eyes certain illegalities and remissness by the statutory functionary exercising its power, which frustrates the social defence and sabotage the very legislation, should it remain mute, unconcerned, spectator or has it also a social accountability as a constitutional functionary in the said regard? The answer to this has already been given by this Court in case of Bhavnagar Salt and Industrial Works Pvt. Ltd. v. Gujarat Electricity Board and Ors., reported in 1990 (2) GLR 750, wherein in para 11 at page 752, it is observed as under:

11. In such type of cases where the public and national interest has a direct concern, I am of the firm opinion that once any Court during the proceedings before it comes across any undisputable and reliable facts bringing to the light the grave scandalous in the matter of public revenue, corruption, mal-practices in any of the Government or statutory bodies or anything of such a nature, which seriously undermines or is likely to undermine and/or is detrimental and against the overall public and national interest of importance, then in that case, it cannot afford to be a mere spectator and/or at the most an arm chair critic, rather it should be first and foremost duty of such Courts first to express out its forthright and righteous condemnation and indignation in its judgment without slightly even losing its usual touch of flair and flavour of humility, restraints dignity and grace of the judicial image and tradition, and secondly then to send a copy of the said judgment to the appropriate authority for necessary information and consideration. To say the least, not to do so in proper case, to my mind, would be not discharging the judicial duty to the extent it is ordinarily expected of.

13.2. We are frankly of the opinion that the national interest-be it social, economical or political, it does not stand as damaged as much as by any illegal activities of anti-socials as it is by the unpatroitic, inefficient, insincere, remiss, corrupt attitude and inaction of the good people and more so that of the statutory functionary manning the public administration entrusted with the maintenance of the law & order, public order in the society. Under such circumstances, we honestly feel that the time has come for the State Government when such statutory functionaries are required to be sternly dealt with for the two obvious reasons: (i) for exposing the society to the menace of disturbance of the "public order" and in case of black-marketing to the menace of "supplies of essential commodities to the community" and (ii) for contemptuously letting down the law enacted by the Legislature for which they have been appointed and paid out of the taxes paid by common men. These two grounds clearly gives us an idea of the gravity and the seriousness of the harm being caused to the people and the concerned law !! The statutory functionary is like a fuse wire. If it is properly connected, then it illuminates people's aspiration and dispels the darkness of the suffering and sorrows of a common man and in case, if its contact is left loose or stands defused, it can as well spell darkness of suffering and sorrows of unthinkable magnitude to the people. In this view of the matter, the real holder of the master-key of success or failure of whole system of the "Rule of Law" lies in the hands of statutory functionaries. Its use or abuse decides lot of a common man and thereby future well being of the State and country as a whole. It is for these reasons also that they are required to be strictly controlled.

14. Apart the State executives, since the question of remissness by the statutory functionaries in matter of implementing and enforcing the law ultimately relates to the legislative policy and prestige, the legislature or the Parliament, as the case may be, in its turn must take upon itself a duty to maintain a "Special Cell" in this regard. This Special Cell in turn should periodically monitor and assess the

performance of the particular statute after it has been put into operation and on noticing pitfalls or failures, should immediately suggest steps and means to set it right. Unless this sort of special care is evinced by the legislature or the Parliament, the object for which a particular law came to be enacted shall remain frustrated to the said extent and shall not reach its desired goal.

15. As discussed above, in our opinion any mala fide or negligent exercise of power, the statutory functionary should be held personally liable. Under the circumstances, every statutory functionary must hereby take a serious note of the observations made in this judgment and as what could be the logical consequences of the callous and indiscreet exercise of power by them (emphasis supplied). Any external influence, recommendation or for that purpose any other consideration have no place whatsoever in exercise of the discretion and accordingly the statutory functionary is supposed to know and accordingly honestly, sincerely and without any fear or favour true to the spirit and object of the Act. In event of any default, by way of want of duty, care and circumspection in such things, personally stands against its name only and in no case, can it be permitted to be heard and take shelter under the cover that he acted or passed any order at the instance, direction or orders of somebody else. In fact, whenever any such application from the detenu or his family member for temporary release u/s 15 is received by the State Government, it is highly desirable that notings on the file should clearly demonstrate the care taken at every stage the file passes through by the personnel concerned involved in decision taking process, including the ultimate statutory functionary, as regards the particular provision of the law and the case-law decided by the High Courts or the Supreme Court having bearing on the ultimate decision. It must also demonstrate indepth inquiry made in the matter or the grounds raised in support of the application for temporary release. We may also point out that the exercise of the extraordinary power in the matter of preventive detention laws including that of temporary release of a detenu lies in an extremely sensitive zone. Firstly, because it puts the citizen behind bars for quite a long period and that too without any trial or notice in the said regard, and further, that too just on the basis of mere suspicion based on the subjective satisfaction of the concerned Detaining Authority. Secondly, it vitally affects the overall social defence disturbing the "public order". And Thirdly, it affects the highly sacrosanct public duty in the matter of implementing and enforcing the law in a particular manner. Accordingly, the concerned statutory functionary has to take utmost care of the liberty of citizen on the one hand and overall social defence on the other. We may also remind the concerned statutory functionaries that any mistake in exercise of this sensitive power under detention law is like touching a live nacked electric wire which admits no mistake and accordingly spares none in electrocuting the anti-social concern and/or sometimes even the statutory functionary exercising such important powers and sometimes both. If the statutory functionary exercising such powers are ignorant of all these, they should better desist from exercising such powers rather than sometimes damaging the liberty of citizen

and other time, by jeopardising the social defence by defusing the law of which it is just a creature. Mistakes which can certainly and reasonably be avoided and yet if the same are consistently persisted with despite the clear-cut guidelines given by the Courts from time to time, the same is indeed a matter of great concern and regret, being a positive threat to the system of "Rule of Law". When the legislature in its absolute wisdom with all its anxiety and concern has enacted extra-ordinary laws like the Preventive Detention Laws for protecting the overall social interest from otherwise being unmanageable anti-social whose menacing criminal activities disturbing "public order" or the "maintenance of supply of the essential commodities to the community", the same indeed needs to be implemented and enforced by the concerned statutory functionary with the same sense of wisdom, anxiety and earnestness with which it is intended to be. Not only that but the decisions rendered by the Supreme Court and the High Court in such matters which are equally the law of the land should be followed with the same sense of respect. If this is just not done, the intended social defence would stand totally defused, frustrated and shattered. None of us can ever afford to forget that after all the Legislature, Executive and the Judiciary and the three separate limbs of one anatomy namely; the State and that the ultimate common object of all these three is to do the "JUSTICE" based on the maintenance of "law and order", "public order" and "supply of essential commodities to the community" and overall "security of the State". Each one of these three separate limbs have been assigned specific roles to play and thereby uphold the "Rule of Law" taking care of the liberty of the citizen on the one hand and overall social interest within the bounds of that particular law and the Constitution on the other hand. This role on the part of each one of these limbs is mutually complimentary as each one of it ultimately travels only in one direction and towards a common destination, namely, "maximum good of the maximum people". Neither the Legislature nor the Executive, nor the Judiciary in any way or afford any confrontation with each other in the matter of common discharge of their duties to the people of any country. When the legislature passes a law, it is the duty of the Executive to enforce it and if by chance some mistakes are committed by it, the Courts of Law in its turn set to point out the said mistakes and if the Executive does not agree with any particular order passed by the Court, it can certainly challenge the same in hierarchy of Courts and get it set-right by taking the matter upto the Supreme Court. Accordingly, if the Legislature also feels that the Court has bypassed the "will of the people" reflected in particular Act or the provisions thereunder, the Constitution of the country being Supreme, the Legislature is entitled to suitably amend the same. This is the only healthy spirit and way in which things are required to be appreciated and that it is only on the observance of the above decencies and uk discipline that the system of the "Rule of Law" can work and have any hope of success in the country. Once this Court or the Supreme Court prescribes certain guidelines regarding the manner in which a particular statutory power has to be exercised, it is the legal duty for the statutory functionary to follow the same, as to disregard the same in a given case may amount to contempt of Court and that for want of proprs explanation

in the said regard may entail further serious consequence.

16. The deep concern in all these matters felt by us and discussed above are also shared and echoed by the Supreme Court in one of its decisions rendered in the case of Kamla Kanyalal Khushalani Vs. State of Maharashtra and another, , wherein in para 8 at page 817, it has been observed as under:

8. It is a matter of great concern and deep dismay that despite repeated warnings by this Court, the detaining authorities do not care to comply with the spirit and tanor of the Constitutional safeguards contained in Article 22(5) of the Constitution. It is manifest that when the Detaining Authority applies its mind to the documents and materials which form the basis of detention, the same are indeed placed before it and there could be no difficulty in getting photostat copies of the documents and materials, referred to in the order of detention, prepared and attaching the same alongwith the grounds of detention, if the detaining authority is really serious in passing a valid order of detention. Unfortunately, the Constitutional safeguards are not complied with, resulting in the orders of detention being set aside by the Court, even though on merits they might have been justified in suitable eases. We feel that it is high time that the Government should impress on the detaining authority the desirability of complying with the Constitutional safeguards as adumbrated by the principles laid down in this regard. We would like to suggest that whenever a detention is struck down by the High Court or the Supreme Court, the detaining authority or the Officers concerned who are associated with the preparation of the grounds of detention, must be held personally responsible against them for not complying with the Constitutional requirements and safeguards (viz., delay in disposing of the representation, not supplying the documents and materials relied upon in the order of detention, etc., etc.) or, at any rate, an explanation from the authorities concerned must be called for by the Central Government so that in future persons against whom serious acts of smuggling are alleged, do not go scot free. In the instant case, not only were the documents and materials not supplied alongwith the order of detention but there has been a delay of about 25 days in disposing of the representation of the detenu and no explanation for the same has been given. These are matters which must be closely examined by the Government.

We may once again point out that the mistakes which are often commonly committed by the statutory functionaries are not such which cannot be avoided if "reasonable care" is taken by them. In fact, if indeed the concerned statutory functionary is (i) truly public spirited; (ii) conscious of its public duty having respect and regard for the law it was entrusted to implement and enforce; (iii) has the heart-burning for sufferings of the people for whom such special detention laws are enacted by the legislature, and (iv) in case, in absence of any of the foregoing three positive qualities, to say the least if it has at least some sense of accountability for avoidable mistake in discharge of its statutory duty and thereby afraid of some consequential penal sanctions, in event of default

being committed, such mistakes; if not at once, at least gradually in the course of time would certainly get eliminate if due care and attention is paid. As a matter of fact, the scheme of the preventive detention law is so well-designed that if just a little care is taken, it would not be possible for any detenu to get out of the clutches of the same permitting any Court to assail the detention order as the same are ultimately and entirely a matter of subjective satisfaction of the concerned statutory functionary. The detention law in that way is such an extraordinary special law over which no appeal lies, wherein on any objective analysis, the Court can substitute its finding. The only exception or crevice whereby the Court has a constitutional power to creep in to intervene to quash and set aside the orders of detention are the powers under Articles 32 and 226 of the Constitution of India exercised by the Supreme Court and the High Court. But here also, the jurisdiction of both the Supreme Court as well as that of High Courts to inquire into the matter is strictly confined to the following aspects, viz., (i) whether the procedural safeguards enshrined in Articles 21, 22(4) and (5) of the Constitution of India as well as those stipulated in the relevant provisions of the particular detention law are duly complied with or not; (ii) whether the impugned detention order suffers from any non-application of mind; (iii) whether the impugned detention order is based on any relevant material or not, (iv) whether the detention powers exercised by the concerned statutory functionary is not mala fide exercise of power. Now, these aspects are certainly not such which cannot be taken care of while passing the order of detention orders or thereafter even while exercising the power of temporary release, and still for whatever reasons, the detention orders practically continuously fail on these patent count only. How could this indeed happen when powers exercised by "the authority is no less than highly qualified Secretary of the State? Some technical failures by the statutory functionary, as stated above, in the initial stage when BM Act came into force was quite understandable but after gaining many years of experience, ordinarily, the same should not have any place. In this regard, it can be stated that-"To fail is not a crime, but to refuse to learn from failures is certainly a crime impermissible". In fact, showing as to how certain recurring avoidable mistakes can be easily taken care of and avoided, the Supreme Court in its decision rendered in the case of Pritam Nath Hoon Vs. Union of India (UOI) and Others, , in paras 3 and 4 has made following useful observations furnishing certain guidelines:

3. What surprises me, however, is the Executive's strange indifference to compliance with law's requirements despite this Court's pronouncements. This has resulted in the release of one who the State alleges, is a master strategist of smuggling exploits at the expenses of the national economy. If there be truth in that imputation-it is not for me to express any views, especially since a prosecution may be launched -who but the concerned authorities are to blame? Had the functionaries entrusted with the drastic detention power been careful enough to update their procedures in keeping with the strict directives laid down by his Court the prospect of criminal adventurers continuing their precious metal

traffic could have been pre-empted constitutionally by successful preventive detention. Had the rulings of this Court, from time to time, in the precious area of personal liberty versus preventive detention, been converted into pragmatic "instructions" by a special cell the law would have fulfilled itself and served the nation with social justice. It served the nation with social justice. It is an imperative of social justice through State action that white collar robbers, dubiously respectable and professionally ingenious, reap the wages of their sins, viz., preventive detention and prompt prosecution, both according to law. Here, by not supplying promptly copies of the incriminating materials by an indifferent authority a detention is being judicially demolished, And prosecution for a serious offence is enjoying an occult spell of gestation because of official slow motion. Whether this Court's insistence on the need to explain every day of delay in serving copies of every document on the detenu, is too tall an order in an atmosphere of habitual institutional paper logging and hibernating is too late to ask. The judicial process if one may self-critically lament is itself no model of perfection in promptitude of disposal and may well sympathise with laggards elsewhere. But personal liberty, constitutionally sanctified is too dear a value to admit of relaxation. And preventive detention being no substitute for prosecution, the Criminal Law stands stultified by the State itself if a charge is not laid before Court with utmost speed and the crime is not punished with deserving severity. The rule of law has many unsuspected enemies and remember, limping legal process as well as slumbering executive echelons and contributory factors to social injustice.

4. I make these separate observations in the fond hope that the effective courier between the Court and the Administration will function so that every ruling of the higher Courts is promptly reflected in imperative instructions to concerned officers so that obviable errors do not fatally flaw otherwise justifiable executive actions. What impels me to write this brief note is the restless thought that law is glittering abstraction in the books but translation of legislation into corrective action. Surely, judged by actualities, judicial and administrative justicing, have many "promise to keep".

The very same directions came to be suggested in the decision rendered in the case of Chandravati Fakirchand Zaveri Vs. The State of Gujarat and Another, , wherein in paragraph 4, this Court has observed as under:

4. In order to ensure that the provisions serve their purpose in practice, a high powered Cell consisting of members who have made a close concentrated and in-depth study of all the decisions rendered by the Supreme Court and notifications in regard to preventive detention must be created. The presiding officer of the Cell must be aware of the latest decisions and must be able to brief the detaining authorities in regard to the law on the subject and the procedural safeguards insisted upon by the Courts. The Cell must prepare a note incorporating the proposition which emerge from the decisions and enumerated the "dos" and "don'ts". It may also contain clear instructions in simple language indicating the

procedural precautions required to be taken and update the same, say every month. The note must also contain the enumeration on the leading cases and set out the ratio of each of the decisions which must be carefully culled out and crystalized. Such a note must be got approved from the highest law officers and must be updated periodically in consultation with them. Only then those officers who have an occasion to exercise the powers would come to know what the law enjoins them to do nor not to do and how to avoid technical pitfalls.

Now taking into consideration the aforesaid two decisions which came to be rendered as long back as in the year 1981 and 1982, the same have failed to bring about the desired result to sustain the detention orders and thereby social defence. It appears that somehow the State Government has not been able to evolve any effective machinery to appreciate and translate those decisions and guidelines into action, else, the detention orders would have so often suffered set-backs more or less on the same grounds! In these days of "computer age", the procedural safeguards and other stage-wise check-ups of certain "dos and don'ts" can easily and effectively be computerised so as to enable the statutory functionaries to keep themselves abreast of the latest position of law in order to avoid the patent pitfalls costing valuable detention orders and thereby damaging the public interest. What is required is the desired determination, will and the follow-up action of the State Government to do needful to assure and beget the necessary confidence of people in public administration. The reason is that the danger to sovereignty of any country in substance to its peace, well-being and freedom of people is not as much and is from the external aggression by the foreign hostile countries, as the internal aggression by anti-socials and anti-nationals like black-marketeers, smugglers, bootleggers and other terrorists and bullies who are bent upon relentlessly robbing common people of its peace, bread and freedom. This internal war goes on and on and it is for these reasons that the problems created by the anti-socials and anti-nationals have to be treated on war-footing by seeing that the statutory functionaries guarding the frontiers are not in any way remiss or relaxed. In order to effectively comply with the various decisions of the Supreme Court and the High Court to make law enacted by the Legislature meaningful to the people, we hope that this time efforts made above would certainly make the State Government conscious of its duty in the matter of such preventive detention. We further sincerely hope that what has been explained in the judgment will be taken in right earnest and all its seriousness, and the needful will be done at the earliest to see that the respect and honour of the law which carry its fruits to the people is not adversely affected and let down by those whose duty is to enforce and implement the law. Like any lofty ideal and resolve, mere passing of any legislation by itself is not enough unless the same is rigorously backed up by equally matching zeal and zest of the State Government to effectively control the statutory functionaries and make them working in the lines of goals set by the particular Act.

17. Finally turning to the questions raised at the top of the judgment, the answers which ultimately boil down from the aforesaid discussion, when briefly

summarised, they are as under:

(i) the enmass cyclostyled paroles granted to the detenu u/s 15 of the BM Act and that too on the basis of a general policy adopted by the State Government that on every religious festivals like Diwali, Id, X'mas; Makarsankranti, etc., the detenu may be "temporarily released" on parole even without waiting for his request application, depending upon the facts and circumstances of particular case retrospectively as well as prospectively vitiates the subjective satisfaction regarding the detention, continued illegal and unconstitutional;

(ii) that Section 15 of the BM Act does not vest any absolute, unfettered and arbitrary powers in the State Government to lightly "temporarily release" the detenu on parole unmindful of the underlying spirit and object of the said Act;

(iii) that the guidelines prepared by the State Government for "temporary release" of the detenu on parole either on the ground of religious festivals and/or on the ground of illness, in the later case without any indepth inquiry regarding the truthfulness and genuineness of the cause pleaded in support of the same, are illegal enough for valid exercise of powers u/s 15 of the BM Act; and therefore they shall have to be declared ultra vires.

(iv) that as regards the stipulated terms and conditions referred to in para 5 and which the detenu is required to comply with on his temporary release, it may be stated that the same by themselves do not vitiates the ultimate subjective satisfaction. However, at the same time, looking to the basic object and nature of the preventive detention, it is highly desirable that some more stringent terms and conditions be imposed so as to clip the wings of the detenu to keep him out of the harm's way. For example; heavy amount of cash bond liable to be cancelled on the slightest breach of the condition and round the clock surveillance over the association and the activities of the detenu which can serve the purpose.

That having regard to the importance of the questions involved in this judgment, Registrar of this Court is directed to forward a copy of this judgment and order by Regd. Post AD to (i) the Secretary, Home Department, Government of Gujarat, Gandhinagar; (ii) The Secretary, Food and Civil Supplies Department, Government of Gujarat, Gandhinagar; and (iii) The Secretary, Legal Department, Government of Gujarat, Gandhinagar for information and necessary action.

18. In the result, we allow this group of seven petitions quashing and setting aside the respective impugned orders of detention passed against the concerned detenu. The concerned respondents are accordingly directed to set at liberty the concerned detenu forthwith, unless their presence in the Jail is required in connection with any other case or proceedings pending against them. Rule accordingly made abso ute in all these petitions.