

(1994) 07 GUJ CK 0002
In the Gujarat High Court

Kanuji Manaji Thakor

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3

Citation : (1994) 2 GLR 1354

Hon'ble Judges : Susantha Chatterjee, J;Akbar Nanjibhai Divecha, J

Bench : Division Bench

Judgement

Susanta Chatterji, J.—Having heard Mr. Prajapati, learned Advocate for the petitioner and Mr. Shelat, learned A.P.P. for the respondents, it appears that the present Special Criminal Application challenges the impugned order of detention dated 9-9-1993 passed by the Police Commissioner, Ahmedabad City, under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) on the grounds as detailed in the annexure alongwith the detention order communicated to the detenu.

2. Admittedly, no Affidavit has been filed by the respondent authorities; Apart from all other factors required to be considered, in the instant case, we are shocked and surprised to find that the representation made by the detenu addressed to the Home Minister for necessary consideration was sent through the detaining authority. The same was received by the office of the detaining authority and it was sent to the A.C.P. of the zone concerned, who in turn, forwarded the same to the local Police Station for investigation. This whole episode appears to have been exercised in futility and it is the resultant effect of non-application of mind. Time to time, the Apex Court and several High Courts in all reported decisions have warned the authorities concerned that in the cases of detention there should not be any inordinate delay in considering the representation of the detenu concerned, where the liberty of a person is involved. The matters are to be treated with utmost seriousness and there should not be any unnecessary delay resulting in quashing the impugned order.

Unfortunately, the instant case is a glaring example where the authorities concerned have not taken proper steps and/or the office or the officers concerned have deliberately acted in such a manner which raises grave suspicion in the mind of the Court that there may be connivance and/ or collusion between certain persons with vested interest and some of the employees and/or agents working under the detaining authority concerned. This Court has to see that there should not be any illegal detention and at the same time this Court will have the anxiety to see that the persons who may be otherwise detained regard being had to the conduct, character and the list of the events, should not escape for certain technical reasons like non-consideration of representation by the authority concerned due to express or implied help of some of the persons in the office of the detaining authority itself. This Court has nothing to support either of the parties in any manner. Although the Court has to act independently, impartially and impassionately yet at the same time proper things should be highlighted so that the matter may be considered in proper perspective. It has to be appreciated properly that there should not be any unnecessary detention to put persons behind the bars if law does not permit and the persons who ought to be proceeded with, may not circumvent the order of detention by taking illegal advantage of certain technical aspects with the help received from the very persons who are supposed to safeguard the requirement of law.

3. In the instant case, since there is deliberate avoidance to consider the representation in time, the detenu is in an advantageous position and this Court with all reluctance quashes the impugned order of detention having observed that this continued order of detention could not be sustained only due to negligence and laches on the part of the officers concerned attached to the office of the detaining authority, who are supposed to be responsible to discharge the duties in accordance with law. There should be a proper enquiry conducted by the appropriate authority as to why the office or officers concerned who received the representation did not apply mind and why it was not sent to proper quarters for consideration, and instead of forwarding the representation to the proper authority, such course was taken which has raised deep suspicion in the mind of the Court, which has to be unveiled by due process. The appropriate authority should initiate proceedings and set the house in order otherwise all the necessary steps under the Preventive Detention Act or the exercise thereunder will become mockery of law. For technical ground intentionally if the orders are not sustained, the administration will be demoralized and the legal experts trying to justify the decisions before this Court will have all the more embarrassment and the entire proceedings will prove fruitless.

4. With these observations, the detention order is set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute.

5. We express our desire that a copy of this order should be sent to the Home Secretary, Commissioner of Police and the D.G.P. and it is expected that proper

Report should be sent to this Court as to necessary compliance with regard to initiation of necessary inquiry into the matter.