

(1987) 10 GUJ CK 0004
In the Gujarat High Court

Khimji Raja Harijan

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 16-10-1987

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3, 3, 5
National Security Act, 1980 — Section 5

Citation : (1988) 2 GLR 1008

Hon'ble Judges : P.M. Chauhan, J;D.H. Shukla, J

Bench : Division Bench

Judgement

D.H. Chauhan, J.—By this petition under Article 226, Constitution of India, petitioner-detenu Khimji Raja Harijan has prayed for the writ of Habeas Corpus and for quashing the detention order dated January 31, 1987, passed by the District Magistrate, Bhavnagar, the detaining authority, u/s 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "the PASA Act") as on the detaining authority being satisfied that with a view to preventing the petitioner for acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him.

2. The detention order was served to the petitioner at about 3.00 a.m. on February 2, 1987 at his residence at Mahalaxmi Mill Chawl, Bhavnagar, where his uncle Atubhai Bhikhabhai was residing with him. Shri S.B. Patel, Police Inspector of "A" Division Police Station, Bhavnagar, who served the detention order to the petitioner, informed the petitioner's uncle Atubai Bhikhabhai in writing about the detention of the petitioner under the PASA Act and also recorded the statement of Atubhai for that purpose. The grounds of detention dated March 31, 1987, were served to the petitioner at the time of serving the detention order and the petitioner was then lodged in prison at Bhuj-Kutch....

.... 3. Deriving the support from the judgment of the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, , it is submitted that

the family members of the petitioner were not informed in writing about the detention and also about the place where the petitioner was to be lodged and, therefore, the detention order vitiates.

4. The information of the detention in this case was given in writing to the uncle of the petitioner. In the subsequently added paragraph 14A in the petition, the petitioner contended that he was arrested by the Police on January 31, 1987 and was taken to the Police Station, and his family members were not informed about his arrest, and that he was detained in Special Prison, Bhuj, and as the respondents failed to inform, the petitioner is deprived of his personal liberty guaranteed under Article 21, Constitution of India. That fact is denied by the respondents, and affidavit is filed by Shri S.B. Patel, Police Inspector of "A" Division Police Station, Bhavnagar, who had taken the petitioner in custody. Police Inspector Shri Patel has deposed in his affidavit that the petitioner was taken in custody at 3.00 a.m. on February 2, 1987 at the residence of the petitioner at Mahalaxmi Mill Chawl, Bhavnagar. Petitioner's paternal uncle Atubhai Bhikhabhai resides with him, and he was informed in writing by Police Inspector Shri Patel that the petitioner was detained under the relevant provisions of the PASA Act and that he was to be lodged in Special Prison, Bhuj. He recorded the statement of Atubhai Bhikhabhai and secured his signature. Atubhai Bhikhabhai is a Municipal Councillor and he had explained to Atubhai that tiffin could be sent to the petitioner if appropriate arrangements were made for the same by the family members. At the time of hearing, Mr. G.D. Bhatt, learned Additional Public Prosecutor for the respondents, had shown us the writing with the signature of Atubhai. Atubhai in his affidavit dated August 24, 1987 in rejoinder, has admitted that he was informed by the Police Officer that the petitioner was to be detained in pursuance of the order of the District Magistrate, Bhavnagar, and his statement was recorded by the Police Officer wherein he had stated that he was informed that the petitioner was being detained by the order of the District Magistrate, Bhavnagar. He, however, denied in the affidavit that he was informed that the petitioner was lodged in Special Prison, Bhuj, and he came to know about it after 10 days when the petitioner had informed him by letter from Special Prison, Bhuj. It is now practically admitted that Atubhai was informed in writing about the detention order by Police Inspector Shri Patel. The learned Additional Public Prosecutor had produced for our perusal signed statement of Atubhai in which he admitted that he was informed about the detention order. However the learned Additional Public Prosecutor could not produce any document to establish that Atubhai was informed that the petitioner was to be lodged in Special Prison, Bhuj. Even though no such writing is produced, we are convinced that Atubhai must have been informed by the Police Inspector Shri Patel that the petitioner was to be detained in Special Prison, Bhuj. It is but natural that when the petitioner was taken in custody from his residence, Atubhai, who was the Municipal Councillor, would definitely inquire as to where the petitioner would be lodged. Deposition of Police Inspector Shri Patel in his affidavit that he had informed Atubhai that the

petitioner was to be lodged in Special Prison. Bhuj, should, therefore, be accepted. However, it should be held that such information was given orally and not in writing. First part of the procedural requirement, as laid down by the Supreme Court is, therefore, complied with.

5. In A.K. Roy's case (supra), provisions of the National Security Act were challenged on various grounds, but in the instant case, the observations regarding the provisions of Section 5, National Security Act, 1980, which are in pari materia with the provisions of Section 5 of the PASA Act are relevant. In paragraph 74 of the judgment, the note of caution is that the laws of Preventive Detention should not, by the backdoor, introduce procedural measures of a punitive kind, and that the detention without trial is an evil to be suffered, but to no greater extent and in no greater measure than is minimally necessary in the interest of the Country and community. The provisions of Section 5, National Security Act, were not struck down as violative of the provisions of Article 21, or the procedure provided under Article 22(5) of the Constitution of India. In paragraph 75 of the, judgment, by making certain observations procedural provisions are enunciated as the mandate of Article 21, Constitution of India, so that the procedure may be fair, just and reasonable.

.... 6. The procedure enunciated by the Supreme Court is that (1) just when a person is taken in custody in pursuance of the order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody; and (2) intimation must also be given as to the place of detention, and in case of subsequent transfer, the place where the detenu is transferred. These two procedural requirements over and above the procedural requirements provided in Clause (5) of Article 22 of the Constitution of India and in the PASA Act are introduced by the judicial pronouncement, as the procedure to be provided in Article 21 of the Constitution of India must be fair, just and reasonable. The Supreme Court has, however, not specifically made observations about the effect of the infraction of the said procedural requirements laid down by it. It is asserted by Mr. H.L. Patel, learned Advocate for the petitioner, that the Supreme Court has read such a mandatory provision in Article 21, Constitution of India, as a part of just and reasonable procedure, and the mandate of the Supreme Court being clear should be literally applied and should be complied as is required when a statute has laid down a mandatory procedure.

7. It is urged on behalf of the respondents that the effect of non-compliance of the procedural requirements laid down by the Supreme Court should not be considered the same as the effect of the infraction of the statutory procedure either under Clause (5) of Article 22, Constitution of India, or under the PASA Act, and that the substantial compliance of the intimation to the family members about the detention order, taking in custody and the place of lodging of the detenu in any other manner, either by orally informing or the relative of the

detenu coming to know from any other source will comply the procedural requirements laid down by the Supreme Court, and non-compliance by not intimating in writing should not per se vitiate the detention order. It is also submitted that the detenu must establish that prejudice is caused to him by non-compliance of the said procedural requirements laid down by the Supreme Court, and if no prejudice is caused, the order of detention cannot be quashed. It is submitted that from the observations of the Supreme Court, what is more important is the information to the relatives of the detenu and not the fact that it should be in writing. It is tried to assert that the procedure required to be followed under Article 21, Constitution of India, is only that procedure which is prescribed by law, i.e. the statute by the legislature, as the second part of Article of the Constitution provides for the exception for deprivation of personal liberty under the Preventive Detention Act.

8. We are, indeed, bound by the above observations of the Supreme Court in paragraph 75 of the judgment in A.K. Roy's case (supra) as under Article 141, Constitution of India, law declared by the Supreme Court is binding on all Courts. The procedural requirements under Article 21, Constitution of India, as laid down by the Supreme Court, should, therefore, be followed. We are, however, considering only the effect of the infraction of the said procedural requirements on which the Supreme Court has not made any observations.

9. The second part of direction for giving intimation as to the place of detention is required to be considered. The Supreme Court has not specifically directed that intimation about the place of detention is required to be given in writing.

10. The point for consideration is that if the requirement about the supply of information in writing about the facts of detention is complied with and furthermore information is also given about the place of detention, will the detention order fail because the intimation about the place of detention was not given in writing? or is the detention order saved in above circumstances as there is substantial compliance with the Supreme Court mandate? or, in other words, is the mandate to be applied in strict sense, in abstract devoid of circumstantial background or whether the mandate is to be applied in the background of facts of each case and to see whether it is satisfied in the essence and spirit by substantial compliance of it? We shall examine these aspects in light of the provisions of Article 21, Constitution of India, and various judgments of the Supreme Court.

11. Article 21, Constitution of India, pertaining to protection of life and personal liberty, provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The latter part of Article 21 can be considered to be an exception to the provision of protection of life and personal liberty of a person and the personal liberty can be deprived of by the procedure established by law. That procedure is provided in Clauses (4) and (5) of Article 22 of the Constitution of India, and in the PASA Act. Article 21 does not specifically provide that the procedure should be just, fair and reasonable, but

that concept is introduced in clear terms in Article 21 by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In that case the provisions of Article 21 relating to personal liberty are extensively discussed. The main judgment was delivered by His Lordship Mr. Justice P.N. Bhagwati (as he then was). After discussing the observations in *A.K. Gopalan Vs. The State of Madras*, and *Rustom Cowasjee Cooper Vs. Union of India (UOI)*, , it is observed that the procedure required to be prescribed under Article 21 should not be arbitrary, unfair, oppressive or unreasonable. It is also observed that even on principle, the concept of reasonableness must be projected in the procedure as contemplated by Article 21, having regard to the impact of Article 14 on Article 21. In the judgment of His Lordship Mr. Justice Y.V. Chandrachud (as he then was), it is observed in paragraph 48 that the mere prescription of some kind of procedure cannot ever meet the mandate of Article 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The question whether the procedure prescribed by law which curtails or takes away the personal liberty guaranteed by Article 21 is reasonable or not, has to be considered, not in the abstract or on hypothetical considerations like the provision for a full-dressed hearing as in a Court-room trial, but in the context, primarily of the purpose which the Act is intended to achieve and of urgent situations which those who are charged with the duty of administering the Act may be called upon to deal with. It is, therefore, clear that the procedure required to be prescribed must be just, fair and reasonable.

12. In *Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others*, . provisions of Article 21 Constitution of India, again came up for consideration before the Supreme Court in which the case of *Maneka Gandhi* (supra) and the concept of reasonableness were considered.

13. The main judgment was delivered by His Lordship Mr. Justice R.S. Sarkaria *Bachan Singh Vs. State of Punjab*, in which it is observed that the principle of reasonableness pervades all the three Articles (Articles 14, 19 and 21), with the result, that the procedure contemplated by Article 21 must be "right and just and fair" and not "arbitrary, fanciful or oppressive"; otherwise, it should be no procedure at all and the requirement of Article 21 would not be satisfied. In paragraph 136 it is also observed:

...If this Article is expanded in accordance with the interpretative principle indicated in *Maneka Gandhi* (supra), it will read as follows:

"No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law".

In the converse positive form, the expanded Article will read as below:

A person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.

Thus expanded and read for interpretative purposes. Article 21 clearly brings out

the implication, that the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.

.....

14. In *Francis Coralie Mullin v. The Administrator Union Territory of Delhi* AIR 1981 SC 746, it is observed that the power of preventive detention has been recognised as a necessary evil and is tolerated in a free society in the larger interest of security of the State and maintenance of public order. The Constitution of India does recognise the existence of this power, but it is hedged-in by various safeguards set out in Articles 21 and 22. Article 22 in Clauses (4) to (7) deals specifically with safeguards against preventive detention and any law of preventive detention or action by way of preventive detention taken under such law must be in conformity with the restrictions laid down by those clause. But apart from Article 22, there is also Article 21 which lays down restrictions on the power of preventive detention. The Supreme Court then referred *Maneka Gandhi's* case (supra) and observed that it is not enough to secure compliance with the prescription of Article 21 that there should be a law prescribing some semblance of a procedure for depriving a person of his life or personal liberty, but the procedure prescribed by the law must be reasonable, fair and just and if it is not so, the law would be void as violating the guarantee of Article 21. After referring *Hussainara Khatoon's* case (supra) and *Sunil Batra Vs. Delhi Administration and Others etc.,* , and *Sunil Batra Vs. Delhi Administration and Others etc.,* , it is observed that the position now is that Article 21 as interpreted in *Maneka Gandhi's* case (supra) requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just, and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise. The Supreme Court was considering the right of the detenu for interviews with friends, relatives and members of his family and not the challenge to the order of detention. In view of that, certain clauses of condition of detention order issued by the Delhi Administration were held to be unconstitutional and void as offending the provisions of Articles 14 and 21, Constitution of India. In *A.K. Roy's* case (supra) no such provisions are declared unconstitutional or void. But it is only observed that for the fair, reasonable and just procedure, the information should be given in writing to the members of the household about the detention and intimation of the place where the detenu is to be lodged.

15. It is, however, interesting to note that in *Maneka Gandhi's* case (supra) distinction is sought to be made between the procedural safeguards for preventive and punitive detentions and other rights forming the part of personal liberty. Krishna Iyer, J. in paragraph 85 of the judgment observed:

To sum up, "procedure" in Article 21 means fair, not formal procedure. "Law" is

reasonable law, not any enacted piece. As Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should conform to Article 22. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. Otherwise, as the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right to life, more fundamental than any other forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, will not; be entitled to any procedural safeguard save such as a legislature's mood chooses.

16. As Article 21 Constitution of India, provides that life or personal liberty of a person can be deprived of only in accordance with the procedure established by law, it is necessary to consider as to whether the procedure should be established by statutory law or by the law laid down by the Courts. This was considered in *A.K. Gopalan Vs. The State of Madras*, . It is observed;

"Procedure established by law" means procedure prescribed by the law of the State These words are to be taken to refer to a procedure which has a statutory origin, for no procedure is known or can be said to have been established by such vague and uncertain concepts as "the immutable and universal principles of natural justice".

It is also observed:

The word "law" in Article 21 has not been used in the sense of "general law" connoting what has been described as the principles of natural justice outside the realm of positive Law. "Law" in that article is equivalent to State-made law.

In *Maneka Gandhi's* case (*supra*), Krishna Iyer, J., observed in paragraph 89 as under:

...A certain normative harmony among the articles is thus attained, and I hold Article 21 bears in its bosom the construction of fair procedure legislatively sanctioned.

Even in *Maneka Gandhi's* case, the procedure under Article 21 is referred to as the procedure which is prescribed by the Statute. In *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, , provisions of Article 21 and the phrase "procedure established by law" came for consideration before the Supreme Court. In paragraph 190, Beg, J. (as he then was) observed that Article 21 was only meant, on the face of it, to keep the exercise of executive power, in ordering deprivations of life or liberty, within the bounds of power prescribed by procedure established by legislation. His Lordship then proceeded to consider the judgment in *A.K. Gopalan's* case (*supra*) and distinction between guarantee of *lex* and *jus*, and observed:

The meaning of the expression "Procedure established by law" came in for discussion at considerable length, by this Court, in *A.K. Gopalan's* case. The

majority of the learned Judges clearly held there that it furnishes the guarantee of "lex", which is equated with statute law only, and not of "jus" or a judicial concept of what procedural law ought really to be. The whole idea in using this expression taken deliberately from the Japanese Constitution on the advice, amongst others, of Mr. Justice Felix Frankfurter of the American Supreme Court, was to exclude judicial interference with executive action in dealing with lives and liberties of citizens and other living in our country on any ground other than it is contrary to procedure actually prescribed by law which, according to the majority view in *Gopalan's* case, meant only statute law. The majority view was based on the reason amongst others, that according to well established canons of statutory construction, the express terms of "lex" assuming, of course, that the "lex" is otherwise valid), prescribing procedure, will exclude "jus" or judicial notions of "due process" or what the procedure ought to be.

It is also observed in para 192:

...Therefore, the question which arises here is whether "jus", held by this Court, in *Gopalan's* case to have been deliberately excluded from the purview of "procedure established by law", can be introduced by Courts, through a backdoor, as though it was an independent right guaranteed by Chapter III or by any other part of the Constitution. I am quite unable to accede to the suggestion that this could be done.

In *Bachan Singh's* case (*supra*) while considering the scope of procedure under Article 21, Constitution of India, it is observed in paragraph 16;

... The word "procedure" in Article 21 is wide enough to cover the entire process by which deprivation is effected and that would include not only the adjectival but also the substantive part of the law. Take for example, a law of Preventive Detention which sets out the grounds on which a person may be preventively detained. If a person is preventively detained on a ground other than those set out in the law, the preventive detention would obviously not be according to the procedure prescribed by the law, because the procedure set out in the law for preventively detaining a person prescribes certain specific grounds on which alone a person can be preventively detained, and if he is detained on any other grounds; it would be violative of Article 21. Every facet of the law which deprives a person of his life or personal liberty would therefore have to stand the test of reasonableness, fairness and justness in order to be outside the inhibition of Article 21.

17. It is, therefore, clear that the procedure prescribed by law under Article 21 should be the procedure prescribed by the Statute. This aspect is required to be considered for the purposes of ascertaining the effect of infraction of the provisions of such procedure and to consider the effect by substantial compliance of the direction of the Supreme Court in *A.K. Roy's* case (*supra*).

18. *G.D. Bhatt*, learned Additional Public Prosecutor for the respondents, referred *Rajeswar Prasad Misra v. The State of West Bengal* AIR 1965 SC 1887, wherein it

is observed that the law declared by the Supreme Court binds Courts in India, "but it should always be remembered that this Court does not enact". It is submitted on behalf of the respondents that even in case of Maneka Gandhi (supra) infraction of the statutory provisions and procedure is not considered per se fatal by the majority of the Judges except M.H. Beg, C.J., and the order of confiscation of the passport was not invalidated as Court was satisfied on the Attorney General making a statement that the petitioner would be heard within two weeks.

.... Admittedly, Maneka Gandhi was not heard immediately after impounding of her passport. Even though Chief Justice Beg observed that the order of impounding the passport was per se fatal the majority did not set aside the order only because the Attorney General made such a statement on behalf of the Union of India. From that it can be inferred that such a statutory and procedural infraction should not be considered per se fatal and should be judged in the light of the facts of each case. It is, however, submitted on behalf of the petitioner that it all depends upon the direction provided in the procedure or in the Statute, and if there is no scope for interpreting it, the effect of infraction would be per se fatal. It is true that in A.K. Roy's case (supra) direction by the Supreme Court is that the information about the detention to the family members of the detenu should be given in writing, and so far as that is concerned, there is no scope for interpretation. However, as in the case of Maneka Gandhi (supra), the effect of the breach is required to be considered in the light of the circumstances following the breach of such provisions. It should therefore, be held that while considering the "effect of the directions by the Supreme Court in A.K. Roy's case (supra), in which direction to give information in writing is clear, the effect of the infraction of detention order should be considered in the light of the circumstances which follow, viz. the oral information to the members of the household about the order of detention. If the information is given in any other manner than in writing, the order should not be set aside as the direction by the Supreme Court is substantially complied with.

19. Mr. G.D. Bhatt, learned Additional Public Prosecutor for the respondents, referred Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, , in which, in the grounds of detention, the detenu was not informed that he had a right to make a representation against the order of detention, as envisaged by Article 22(5), Constitution of India, read with Section 8, National Security Act, 1980, and also a right of being heard before the Advisory Board while he was served with the detention order. It was observed that the right of the detenu to make a representation under Article 22(5) would be, in many cases, of little avail if the detenu is not "informed" of that right. However, in that case noncompliance of the provisions of Article 22(5) was not considered per se fatal as the detenu was an enlightened person and had been in active politics and was fully cognisant of his right to make a representation. Deriving strength from the observations of the Supreme Court, it is submitted that such infraction should not be considered to be fatal, and in suitable cases exception can be carved out.

It appears that the Wasi Uddin Ahmed's case (supra) was an exception to the general principles as the circumstances in that case warranted it. Such an exception can be carved out if the facts of the case permit such exception.

20. So far as the infraction of the provisions of Article 22(5), Constitution of India, or the Statutes relating to detention Acts are concerned, it is now well settled law that any such infraction would invalidate the detention order. In *Hem Lall Bhandari Vs. State of Sikkim and Others*, ; *Abdul Latif Abdul Wahab Sheikh Vs. B.K. Jha and another*, ; it is observed that the procedural requirements are the only safeguards available to the detenu. Since the Courts are not expected to go behind the subjective satisfaction of the detaining authority, they should be strictly complied with, and non-compliance would invalidate the order. In *Mrs. Tsering Dolkar Vs. Administrator, Union Territory of Delhi and Others*, , it is observed that the law as laid down by the Supreme Court clearly indicates that in a matter of preventive detention case is not one of prejudice but one of strict compliance with the provisions of the Act, and when there is a failure to comply with those requirements, it becomes difficult to sustain the order. Other judgments on the point are *Bablu Das Vs. The State of West Bengal*, ; *Khudiram Das Vs. The State of West Bengal and Others*, ; and *Fogla and Another Vs. The State of West Bengal*, . It is, however, clear that in all those cases the detention orders were set aside only because either the provisions of Article 22(5), Constitution of India or the extended right of the detenu or the obligation of the detaining authority under the provisions of Article 22, Constitution of India, or the provisions of the Statutes relating to the preventive detentions were infringed. It is, however, submitted on behalf of the petitioner that no distinction can be made between the infraction of the procedure provided in the Statute, or Article 22(5), Constitution of India and the procedure prescribed by the Court under Article 21, Constitution of India. It is true that the procedure prescribed by the Court under Article 21 can never be considered to have lesser effect than the procedure prescribed by the Statute or under Article 22(5), but while considering the effect of the infraction of the procedure prescribed by the Court under Article 21, the circumstances, the directions, etc. should be considered as was done by the Supreme Court in *Maneka Gandhi's case* (supra). Every infraction of the procedure prescribed by the Court under Article 21, therefore, should not be considered per se fatal. Even in *A.K. Roy's case* (supra) the Supreme Court did not consider the effect of infraction of procedure prescribed by the Court.

21. In *A.K. Roy's case* (supra), the Supreme Court was considering the provisions of Section 5, National Security Act, 1980. The said provisions were not declared ultra vires the Article 21 for the reason that they did not conform the test of fairness, justness and reasonableness, under Article 21. It is, however, clear that the Supreme Court observed that in order that the procedure attendant upon detentions should conform the mandate of Article 21 in the matter of fairness justness and reasonableness, it should be considered imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the

child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. It is also directed that intimation must be given as to the place of detention, including the place where the detenu is transferred from time to time. This is the procedure laid down, so as to meet the requirements of fairness, justness and reasonableness under Article 21. The direction that intimation should be given in writing is clear. However, emphasis is on giving information to the members of the household so that they may immediately take action for making the representation challenging the detention or supplying clothes and food to the detenu. That appears to be the purpose which can be served by giving the information in any other manner than in writing. By this, we do not mean to say that the direction of giving information "in writing" is superficial, as the law laid down by the Supreme Court is binding to this Court, but while considering the effect of infraction of the said procedure we observe that the substantial compliance would meet with the requirements of the directions by the Supreme Court. We are, therefore, of the view that oral intimation to the members of the household of the order of detention and the place of detention would substantially comply with the directions by the Supreme Court and would not vitiate the order of continued detention....

.... 22. It is submitted on behalf of the respondents that no prejudice will be caused to any detenu if the directions by the Supreme Court are substantially complied with by oral information or otherwise. In support, judgment in Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others, is referred. In that judgment proposition of law is not laid down that in detention cases prejudice should be proved. On the contrary, the Supreme Court in Mrs. Tsering Dolkar's case (supra) observed that in case of Prakash Chandra Mehta (supra) there is no clear indication of the test of prejudice being applied. The observations in the last para of the judgment in Prakash Chandra Mehta's case are more of a general nature and are not much relevant for the purpose of the instant case. No element of prejudice is, therefore, required to be proved by the detenu.

23. In A.K. Roy's case (supra) the observation is for giving information in writing of the order of detention and of the fact that the detenu has been taken in custody in pursuance of the order of detention, to the members of his household. That direction in writing is only relating to the order of detention. It is not stated that the intimation must also be given in writing as to the place of detention including the place where the detenu is transferred from time to time. As it is not specifically mentioned that, that intimation should be in writing, oral intimation would serve the purpose. If at all the Supreme Court had considered it necessary, it would have specifically mentioned that such information should also be given in writing. It should, therefore, not be inferred that such information about the place of detention or transfer of the detenu from one Jail to another Jail should also be given in writing. Reverting to the facts of the instant case, it is clear that the information about the order of detention was given in writing and

the intimation about the place of detention was given orally. Direction by the Supreme Court was, therefore, complied with, and for that reason the detention order does not vitiate.

24. Evidence of the witnesses is discussed above and it is clear there from that the activities of the petitioner as a bootlegger are prejudicial to the maintenance of public order. As provided in Sub-section (4) of Section 3 of the PASA Act, if any person is engaged in or is making preparation for engaging in any activities as a bootlegger, which affect adversely or are likely to affect adversely the maintenance of public order, then such a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order". Explanation to Sub-section (4) of Section 3 of the PASA Act provides that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any person referred to in Sub-section (4) of Section 3 of the PASA Act directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to life, property or public health. Evidence is clear that the petitioner is carrying on activities as a bootlegger, and to facilitate his activities he created an atmosphere of terror and because of that, armed police party and SRP were required to be posted in that locality. Even witness Jivabhai had to leave the place and go to another place for residing. The detaining authority was, therefore, rightly subjectively satisfied that the activities of the petitioner as bootlegger affected public order.

25. No other point is urged before us. The detention order dated January 31, 1987 passed by the District Magistrate, Bhavnagar, the detaining authority, against the petitioner, does not suffer from any vice and, therefore, should be upheld and the petition should be dismissed.

26. In the result, the petition is dismissed. Rule discharged.