

(1994) 07 GUJ CK 0015
In the Gujarat High Court
Case No : Spel. Cril. A. No. 13/94

Thakore Laxamji

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Gujarat Prevention of Anti-social Activities Act, 1985 — Section 3(2), 9(2)

Citation : (1995) CriLJ 1193 : (1994) 2 GLR 1323

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

Bench : Division Bench

Advocate : Anil S. Dave, for the Appellant; J.A. Shelat, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Chatterji, J.—A very short point has arisen in the instant case, which challenges the order of detention dated 23-9-1993 passed by the District Magistrate, Mehsana, under Sub-section (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

2. Upon perusal of the materials on record, we observe that in the instant case the detaining authority has clearly forgotten that this country is ruled by laws and not by persons with whims. In a case of detention the detaining authority has to be very cautious and to proceed in accordance with law and in terms of the decisions rendered from time to time by the apex Court of the Country and several High Courts giving specific indication that in a case of detention, where liberty of a person is involved, under Article 22(5) of the Constitution steps should be taken to enable the detenu to take effective steps for filing the representation and there should not be inordinate delay in considering the representation.

3. In the instant case our attention has been drawn to the fact that along with

the grounds of detention, statements recorded have not been supplied, although privilege u/s 9(2) of the Act was sought for with regard to the names and addresses of the witnesses concerned. Necessary and effective documents which were to be supplied to the detenu have not been supplied and in spite of other grounds the detenu is handicapped to make a representation and this Court finds a very severe infirmity in the order of detention which cannot be continued. Upon perusal of the record further we however, observe that some time the infirmities in the order occur inadvertently, some time we have the impression that there are certain steps which amount to negligence or to help the detenu to circumvent the order of detention which has to be highly deprecated. Looking at the negligent steps taken in the instant case, we are constrained to observe that the detaining authority in the instant case has acted in a manner which is wholly unwarranted and uncalled for. Such acts of negligence are required to be probed into so that the recalcitrant officer, if any, should meet the consequences and a genuine offender may not escape by taking the advantage of such negligence on the part of such an officer while a bona fide person may not languish behind the bars at the cost of his personal liberty. This Court does not have any sadistic pleasure to pass strictures or make unnecessary comments but regard being had to the materials on record, this Court is constrained to make such observations so that the proper authority should take into account the negligent steps taken at the office of the detaining authority in not complying with necessary requirements in detention cases as strictly demanded under the law, for which the impugned order in the instant case could not be sustained. For the foregoing reasons, this petition is allowed. The order of detention is quashed and set aside. The detenu is ordered to be set at liberty if not required in connection with any other case. Rule is made absolute.

4. A copy of this order be sent to the authorities concerned for taking effective steps and to send a report to this Court as to compliance with the aforesaid directions.

Petition allowed.