
(1995) 01 GUJ CK 0002
In the Gujarat High Court

Yogeshbhai Jashvantbhai Modi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 — Section 15, 3(1)

Citation : (1997) 1 GLR 170

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

Bench : Division Bench

Judgement

S.D. Dave, J.—Yogeshbhai Jashvantbhai Modi, petitioner-detenu herein, by this writ petition, under Article 226 of the Constitution of India, has brought under challenge the impugned order of detention dated 8-9-1994, passed against him u/s 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the Act") by the Deputy Secretary, Government of Gujarat, inter alia praying for quashing and setting aside the same and to set him at liberty forthwith.

2. To be brief on the alleged grounds as set out in detail in the grounds of detention dated 8-9-1994 at Annexure "B", the State Government on being satisfied that the anti-social activities alleged against the petitioner were prejudicial enough to the maintenance of the supplies of the essential commodities, viz., Edible Oil to the community, and accordingly, in order to immediately prevent him from carrying ahead his said activities in future, it clamped out the order of detention dated 8-9-1994 upon him, giving rise to the present writ petition.

3. Mr. P.M. Thakker, the learned Advocate appearing for the petitioner, though has raised several contentions in the memo of petition, however, at the time of hearing, has chosen to press into service precisely one contention which according to him, goes to the root of the matter vitiating further continued

detention being covered by the decision of this Court, rendered in case of Dilipkumar Amrutlal Ganatra Vs. District Magistrate and Others, . The said contention according to Mr. Thakker is that at the time when the petitioner was temporarily released on parole by the State Government he was released on such liberal terms and conditions that they ex-facie reflect and demonstrate that he was no more potential threat prejudicial to the maintenance of supplies of essential commodity to the community, and in this view of the matter, therefore, his further continued detention to the said extent was not necessary. While making good this contention, Mr. Thakker submitted that the petitioner was temporarily released by the State Government on parole for seven days on the alleged ground of sickness of his mother by an order dated 29-10-1994 on the following terms and conditions:

ORDER Food and Civil Supplies Department 14, Sardarbhavan, 6th Floor, Sachivalaya, Gandhinagar. Dated the 29th October, 1994 No. PRL/1194/1553/Spl.: In exercise of the powers conferred by Section 15 of the Prevention of Black Marketing 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 Yogeshbhai Jashvantbhai Modi in respect of whom a Detention Order No. DTN/1194/1435 (1)/Spl. dated 8-9-1994, made by the State Government shall be granted parole for a period of 7 days (Seven days) 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 person").

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 the maintenance of supplies of essential commodities.

4. 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.

5. He shall surrender to the Superintendent of the Sub-Jail, Mahesana on the said period unless his order is cancelled earlier in which he is directed to surrender in the order relating to such cancellation.

6. He shall furnish a personal bond of Rs. 10,000/- (Rupees 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 Ahmedabad District during the said period. By order and in the name of the Governor of Gujarat.

Sd/- S.D. Dave Under Secretary to the Government

Mr. Thakker further submitted that by no stretch of imagination, it can be said that the aforesaid terms and conditions were anyway stringent and deterrent enough to discourage, hold-back and keep under control the detenu from carrying on his alleged futuristic activities prejudicial to the maintenance of supplies of commodity, viz., edible oil essential to the community as alleged in the grounds of detention. Mr. Thakker further submitted that if the detenu can be lightly released on such liberal terms and conditions, it in a way also sadly reflects upon the original subjective satisfaction arrived at by the Detaining Authority, while clamping down the order of detention on the petitioner!! Mr. Thakker further submitted that on the basis of such liberal terms and conditions if a detenu can be released, the whole purpose and object of the preventive detention and the subjective satisfaction on that count stands self-exposed vitiating the order of detention, and in that view of the matter, the impugned order of detention deserves to be quashed and set aside and the petitioner be set at liberty forthwith.

4. Mr. R.P. Solanki, the learned A.P.P. when he was confronted with the above submissions, though initially made some feeble attempts to sustain the order of detention, was ultimately found to be unable to carry his battle of arguments any further to persuade this Court to take a view contrary to the one already taken in the case of Dilipkwnar A. Ganatra (supra) by distinguishing the same on any count.

5. Thus, taking into consideration the decision of this Court rendered in the case of Dilipumar A. Ganatra (supra), it has got to be stated that the contention raised by Mr. Thakker has a considerable force and therefore, the same deserves to be accepted. On carefully scrutinising the above quoted terms and conditions while releasing the petitioner on parole, no doubt, it does give some first hand hazy impression that there is some effort to keep under control the alleged activities of the petitioner when out of jail for temporary period but when the same is closely examined, that appears to be more or less a shadow rather than the substance!! Mere look at the aforesaid terms and conditions on which the petitioner came to be released for as many as seven days, the serious question that looms large and arises for consideration is "Are these terms and conditions such which could ordinarily satisfy any prudent/reasonable person that the same would be voluntarily, strictly observed and would keep the petitioner within the bounds and out of harms way without there being any officer specifically deputed to shadow, track and watch his further probable alleged illegal activities insisting upon strict observance and enforcement of the same!! Further still, looking to the terms and conditions one more question that arises is-Is this the way in which the discretion in the matter of suspicion jurisdiction under the preventive detention law is to be exercised as if the petitioner-detenu was to be released on some probation of good conduct? If we carefully consider the aforesaid seven terms and conditions they express and demonstrate at the most a pious wish/

hope of the State Government that the petitioner will be good enough to conduct himself within the bounds of the said terms and conditions. That is all!! There is indeed no guarantee whatsoever that he will conduct himself accordingly! Rather looking to the suspicion jurisdiction under preventive detention such liberal terms and conditions which lack effective implementation and observation has no place!! It is indeed strange that everything is left to the detenu to voluntarily observe the said terms and conditions, if he is so inclined blissfully ignoring the public interest!! Who would believe that he will? Does this at all befit with the detention jurisprudence where the sole core of the exercise of extraordinary power is suspicion and the entire subjective satisfaction is based on the said account alone!!! Does the law permit authorities to substitute their trust, hope and pious wish in place of the suspicion? Obviously and definitely No. Then whether the alleged suspicion against detenu carrying on prejudicial activities to the maintenance of the supply of the essential commodities to the community on the basis of which ultimately order of detention came to be passed, can be put in abeyance, in cold storage even for a limited and temporary period of release of the detenu? This is not only risky, but highly unintelligible to trust a person who came to be preventively detained bearing in mind his potentiality regarding his futuristic illegal activities prejudicial to the maintenance of supply of essential commodity to the community. In fact, unless and until the detenu is released for comparatively shorter period as much short as it is possible to do and that too under the active surveillance of the responsible officer of the confidence of the Government, there is indeed no guarantee whatsoever that he will not once again resort to the alleged activities or take public order in his hand and indulge in the black marketing activities prejudicial to the maintenance of supplies of essential commodities to the community, alleged against him. Thus, the aforesaid terms and conditions minus live shadow supervision to watch and control the clandestine black marketing activities by the detenu is nothing but an empty formality devoid of any sense and substance!! In fact, looking to the preventive object of the Black Marketing Act, the aforesaid 7 terms and conditions alone standing by themselves cannot be said to have any deterrent effect to control the clandestine black marketing activities by the detenu when he is outside the jail, even for a day!! Rather the same militates against the avowed preventive object and common sense rendering further continued detention of the petitioner illegal and unconstitutional. How and why, for detail information the decision of this Court rendered in case of Dilipkumar A. Ganatra (supra) be referred to.

6. We are indeed sorry to observe that it is unfortunate that despite the fact that the decision rendered in the case of Dilipkumar A. Ganatra (supra) which was rendered as long back as two years before on 18-1-1992, and copies of the same were forwarded to (1) the Secretary, Home Department; (2) the Secretary, Legal Department, and (3) the Secretary, Food & Civil Supplies Department, Government of Gujarat, for necessary information and action, the same for whatever reasons appears not to have been taken any notice of(!!!) firstly, at the

serious cost of personal accountability of whosoever concerned in taking necessary steps to evolve suitable deterrent terms and conditions which can take care of the preventive object of the Act, even when temporarily released on parole, resulting into letting off the detenu preventively detained on extremely serious allegation of black marketing and secondly, further none-the-less equally important duty and obligation of the concerned officers to respect and implement the guidelines given to them by this Court in the larger public interest!!! Such indiscreet and callous attitude of the Government in this regard is too difficult to understand! It is indeed quite unfortunate that when the Parliament in its utter anxiety came out by enacting a special Act like the Black Marketing Act for the purpose of preventing the black marketing activities to save the society from the scourge and curse of black marketing, and thereafter even whenever the detention orders were passed, this Court and Supreme Court noticing some avoidable pitfalls and patent infirmities in enforcing, implementing and executing the Black Marketing Act, vitiating the detention order, have pointed out what is required to be done to save and sustain the orders of detention and that too by forwarding a copy of the judgment to all the concerned in Government, and yet concerned Secretary instead of utilising the same to make the detention order foolproof by doing the needful in the matter on war-footing by evolving and imposing stringent terms and conditions, have quite leisurely and in callous manner appear to have ignored the same for about two years by this time!! as if he has no accountability firstly to the Parliament which passed the Black Marketing Act, secondly, the society for which to save and protect the said detention law came to be enacted and thirdly, this Court which in overall public interest provided guidelines showing how to conduct and exercise discretion in the matter of parole in such sensitive matter as the preventive detention! One can quite understand an antisocial violating a particular provision of the law, having no regard and respect for the Society and the law, but it is indeed too difficult to imagine much less to believe that the Government is not interested in either honouring and upholding the avowed object underlying the special statute like the Black Marketing Act by not doing the needful in time at the earliest possible opportunity!!

7. The question is whom the Society should consider more blameworthy? The black marketeers or the concerned Government officer who disregarded the guidelines and directions of this Court given in overall public interest!! If the Government is not interested in honouring and upholding the dignity of the Parliament which enacted the special statute, far from it hardly any anti-social black marketer can be expected to care and respect the same! It is for the Higher-ups in the State Government to decide where to fix the accountability/responsibility and what should be done in such matters to save the public interest!! We simply express our disgust, dismay and frustration the way in which the Government machinery functions where despite the exhaustive guidelines given to sustain the order of detention in overall interest of the Society two years back, has not done anything in the matter to evolve the stringent terms and

conditions to deter the detenu from carrying on his futuristic activities when temporarily released on parole!! Be the case as it may, so far as the facts and circumstances of the present case are concerned, taking into consideration the comparatively quite general and liberal terms and conditions imposed while releasing the petitioner on parole for seven days, the same is nothing but mockery of the preventive detention law. If the detenu is required to be temporarily released, the B.M. Act itself has given enough discretionary powers in Section 15 and the authorities can certainly exercise the same, but while exercising such powers, it cannot be permitted to be indiscreet, callous and oblivious to the preventive object underlying the Act. In fact, whenever the detenu applies for temporary release under any detention law, how indeed the State Government is required to exercise its powers are exhaustively dealt with and discussed in case of Dilipkumar Ganatra (supra) where clear guidelines are enunciated on the point. But unfortunately in the first instance, where is that public accountability, and in the second instance, where is that machinery to hold responsible Government officers committing blunders at the cost of social peril, and in the third instance, last but not the least, where is the vigilance of the people affected, the eternal price for democracy!! It is here and perhaps because of this only that this Court feels duty bound to speak forth its mind without any reservation in the public interest!! Turning back to the facts of the present case, the question that arises before us is-Did the detenu all of a sudden improve and became honest and law-abiding enough who could be temporarily released on any casual terms and conditions as has been done in the instant case or is he still the very same problematic person whose activities were still prejudicial to the maintenance of the supply of essential commodities for which reason the order of detention was required to be immediately clamped down upon him? In such a paradoxical situation with inconsistent stand of the Government at the time of passing of the order of detention against the petitioner and subsequently at the time of releasing him on parole, we have indeed no difficulty in holding that the Government has not at all felt any imminent apprehension regarding the seriousness of the futuristic activities that the petitioner may carry on while being released on parole on liberal terms and conditions! Once that is an inevitable rational conclusion then we though may not go to the extent of saying that the initial subjective satisfaction of the Government because of subsequent liberal terms and conditions *ah initio* vitiated the detention order as suggested by Mr. Thakker, but we can undoubtedly say that looking to the liberal terms and conditions, it appears that for future purpose, the preventive object to detain the petitioner no more survives and has lost all its significance! Thus, taking into consideration the fact that the petitioner came to be released practically on quite lighter and comparatively illusory terms and conditions without there being any direct watch to control the detenu from committing the breach of the said terms and conditions, it appears that the State Government appears to be quite assured of the petitioner not acting prejudicial to the maintenance of the supply of essential commodities! When that is the only inevitable conclusion from the manifest conduct of the State Government, the further continued detention of

the petitioner is rendered illegal and unconstitutional and in the light of same petitioner deserves to be released forthwith.

8. In the result, this petition is allowed. The impugned order of detention is quashed and set aside. The petitioner is ordered to be set at liberty forthwith unless his presence in jail is required in connection with any other case or proceedings. Registry is directed to forward a copy of this judgment to: (i) the Chief Secretary, Government of Gujarat, Gandhinagar, drawing his attention to the decision of this Court rendered in the case of Dilipkumar A. Gantra (*supra*) for immediate appropriate action, and to (ii) The Secretary, Home Civil Supplies, (iii) The Secretary, Home Department and (iv) The Secretary, Legal Department, Government of Gujarat, Gandhinagar.