IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 660 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 7442 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 660 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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IMRAN ALIAS IMLO S/O HASANBHAI ISMAILBHAI KATARIA THROU BROTHER IRFAN JAMALBHAI KATARIA
Versus
STATE OF GUJARAT

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Appearance:
MR BHUNESH C RUPERA(3896) for the Appellant(s) No. 1
MR CHINTAN DAVE, AGP for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 07/10/2020
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. This appeal under Clause 15 of the Letters Patent Act is at the instance of an unsuccessful writ applicant (detenue) of a writ application and is directed against the

judgment and order passed by the learned Single Judge of this Court dated 16.09.2020 in the Special Civil Application No.7442 of 2020 by which the learned Single Judge rejected the writ application, thereby affirming the order of preventive detention dated 12.05.2020 passed against the appellant herein by the District Magistrate, Rajkot, in exercise of his powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "the Act 1985") branding the applicant as a 'dangerous person', as defined under Section 2(c) of the Act 1985.

2. The learned Single Judge while rejecting the writ application observed thus :

> *"6. Upon careful perusal of the order of detention, it appears that the petitioner has used lethal weapon by administering threat to the complainant and witnesses at public place. He was found with sword in all three offences.*
>
> *7. Thus, from the order of the detention, it reveals that the petitioner has used lethal weapon by administering threat to the complainant and witnesses at public place and in view of detaining authority it has resulted not only into breach of law and order but also public order and, therefore, detaining authority by applying its mind arrived at subjective satisfaction, cannot be said to have been vitiated. Further, the detention of a person is not to punish him but to prevent him from doing so in future. The basis of detention is the substantial of the*

execution of the reasonable probability to a likelyhood of a detenue acting in a similar manner by his act and preventing him by detaining from doing the same. The power of preventive detention is precautionary power exercised in reasonable anticipation. It may or may not relate to offence. It is not parallel proceedings. There is a very thin line between question of law and order situation and a public order situation and some time, the acts of a person relating to law and order situation turn into the situation of a public order situation. The conduct on part of unlawful assembling and petitioners armed with sword shows the activity of the person likely to disturb the public order and peace. If such person moves freely in society, no one can live with peace.

8. Under the circumstance, I am of the view that the satisfaction arrived at by the detaining authority is based on the actual facts and does not require any interference. Under the circumstances, I am of the view that the present petition requires to be dismissed and is hereby dismissed and the order of detention dated 12.05.2020 passed by the respondent –detaining authority is hereby confirmed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated forthwith."

3. Being dissatisfied with the judgment and order passed by the learned Single Judge referred to above, the appellant (detenue) is here before this Court with the present appeal.

4. We have heard Mr. Bhunesh C. Rupera, the learned counsel appearing for the appellant and Mr. Chintan Dave, the learned AGP appearing for the State.

5. It appears from the materials on record that the Detaining Authority took into consideration four Criminal Cases registered against the detenue at the Gondal City Police Station. One of the four cases relied upon by the Detaining Authority is in respect of the First Information Report registered on 27.05.2017 vide C.R. No.I-64 of 2017 for the offences punishable under Sections 307, 143, 147, 148, 149, 506 (2) of the IPC and Section 135 of the Gujarat Police Act. It appears that the Detaining Authority remained under the impression that the said case is still pending and the detenue has been released on bail in connection with the said offence vide order passed by the concerned Court dated 28.06.2017. However, the correct factual position is that the First Information Report referred to above culminated in the Sessions Case No.31 of 2017 and vide judgment and order dated 17.10.2019 passed by the 8th Additional Sessions Judge, Gondal, the detenue came to be acquitted. It appears that this fact was not brought to the notice of the Detaining Authority by the Sponsoring Authority.

6. We are of the view that the order of detention deserves to be quashed and set aside on the ground of non-application of mind itself. Had this material fact of acquittal in the Sessions Case No.31 of 2017 been placed before the Detaining Authority along with a copy of the judgment, it might have influenced the mind of the Detaining Authority one way or the other on the question whether or not to make the detention order. As rightly submitted by Mr. Rupera, the withholding of the vital fact that the detenue has been acquitted in the aforesaid sessions case, resulting in the non-application of the mind of the Detaining Authority to the said fact, vitiates the impugned order of detention.

7. The afore-discussed proposition of law is no longer *res integra* in view of the two decisions of the Supreme Court (i) **Ramesh vs. State of Gujarat & Ors.,** AIR 1989 SC 1881 and (ii) **Dharamdas Shamlal Agarwal vs. The Police Commissioner & Anr.,** Judgments Today 1989 (1) SC 580.

8. We also take note of the fact that the detaining authority has claimed privilege under Section 9(2) of the

Act, 1985 for not disclosing the identity of the persons whose statements came to be recorded in-camera.

9. Section 9(2) of the Act, 1985 reads thus:

> ***"9. Grounds of order of detention to be disclosed to detenue-***
>
> *(1) ... ...*
>
> *(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."*

10. In the aforesaid context, we may refer to and rely upon a Full Bench decision of this Court in the case of **Chandrakant N.Patel vs. State of Gujarat and others [1994 (1) GLR 761]**. The Full Bench has observed thus:

> *"On careful reading of the said decision, it can be said that the ratio of the decision is that the privilege u/s 8[2] of the National Security Act can be claimed by the detaining authority only when it is properly and genuinely satisfied that it is against public interest to disclose the facts which are withheld while communicating the grounds of detention to the detenue, and that while deciding whether it is necessary to withhold the materials, facts and particulars to the detenue on the ground that it will be against public interest to do so, another public interest which requires disclosure of all the relevant materials and particulars on which the order of detention is based with a view to affording an adequate opportunity of making an effective representation to the detenue against the order of detention must be borne in mind and the delicate*

balance between the two must be maintained. If the privilege is claimed bona fide and after proper application of mind, then the detenue cannot legitimately complain that he has been deprived of his right to make an effective representation because of the vagueness of the grounds of detention. The observations which have been made by this Court in that case as regards the promise of confidentiality, etc., are by way of elaboration as to what can be regarded as sufficient or not sufficient for the purpose of arriving at the bona fide satisfaction of the detaining authority in that behalf."

11. The Full Bench while referring to on the case of **Balkrishna Kashinath Khopkar vs. District Magistrate, Thana, [1956 [58] BLR 614]**, also observed that the privilege can only be claimed in public interest. While claiming the privilege, the detaining authority must act with a sense of responsibility and it must consider which facts should not be disclosed to the detenue by reason of the fact that it would be against public interest to disclose those facts. The Full Bench then observed, *"If we examine the decisions in the case of Bai Amina and in the case of Balkrishna closely, it becomes clear that what has been briefly stated as the correct legal position as regard the nature and extent of the privilege in the case of Balkrishna, has been more elaborately stated in the case of Bai Amina."*

12. The Full Bench then observed, *"Since the satisfaction in this behalf has to be of the detaining authority, obviously, the promise of confidentiality given by the person recording the statement cannot by itself be regarded as sufficient ground for withholding the disclosure of such particulars and materials. But if, after considering the general background, character, antecedent, criminal tendency or propensity, etc., of the detenue and the reluctance of the witnesses who gave the statements against the detenue, the detaining authority is satisfied about the necessity of withholding some particulars or materials, then it cannot be said that the same was not done in public interest, and that public interest likely to be subserved by non disclosure did not outweigh or override the public interest intended to be served by disclosure of the relevant particulars and materials to the detenue."*

13. In this view of the matter, the detaining authority while exercising powers under Section 9[2] of the PASA Act for claiming privilege is expected to consider the general background, character, antecedents, criminal

tendency of propensity etc. of the detenue. In the instant case, if the grounds of detention are considered, all that is recorded by the detaining authority is that the fear expressed by the witnesses is found to be genuine and correct by the detaining authority. The detaining authority has recorded that it has carefully scrutinized, examined and considered all the materials that were produced before him by the sponsoring authority. It is, therefore, clear that the detaining authority, while verifying the statements of the witnesses and while considering the question of exercising the privilege under Section 9(2) of the PASA Act, has not taken any independent steps for considering the general background, character, antecedents, criminal tendency etc. while recording subjective satisfaction, but has relied solely on the material produced by the sponsoring authority. There is no contemporaneous record to indicate the steps taken by the detaining authority and the grounds and reasons for arriving at the subjective satisfaction. It is therefore very difficult to conclude that the detaining authority has considered the general background, character,

antecedents, criminal tendency and propensity etc. of the detenue while arriving at the subjective satisfaction, for the need for exercise of powers under Section 9(2) of the PASA Act and claim privilege by not disclosing the identity of the anonymous witnesses.

14. In this regard, the decision of this Court in the Special Civil Application No.9005 of 1998 in the case of **Shobhnaben wife of Chandrakant Chhara vs. Commissioner of Police**, decided on 04.08.1999 may also be considered. In that case, the detaining authority while recording a subjective satisfaction in respect of the petitioner's activities being prejudicial to the maintenance of public order, relied on the statements given by the witnesses. The said witnesses were summoned before the detaining authority and the detaining authority verified the correctness of the fear of retaliation expressed by the witnesses. But the detaining authority did not record its satisfaction in respect of the credibility of the witnesses and genuineness of the statements given by them. While relying on the decision in the case of **Mohd. Sharif alias**

Kaliyo Nurmohammadsarnibapuu Shaikh vs. Commissioner of Police, Ahmedabad city [1997(1) GLH1017], the Court quoted the observations made therein as under:

> *"The question which requires consideration in the facts of the present case is as to whether the Detaining Authority had applied its mind to the statements of these witnesses with regard to these incidents while forming an opinion so as to warrant the detention." .... "Except the contents of these statements, there is no other contemporaneous evidence on the basis of which the detaining authority could form the opinion with reference to any contemporaneous evidence relating to the date of the respective incidents so as to form the opinion that the petitioner detenue was a dangerous person and that he would be subjected to the detention under the provisions of the Gujarat Prevention of Anti Social Activities Act. When the verified statements are placed for consideration before the detaining authority, the detaining authority has to apply its mind and such application of mind must be made manifest in the body of the order itself and in any case, when it is alleged that the order had been passed without application of mind, it must be shown before the court by way of filing the affidavit or otherwise on the basis of some contemporaneous evidence and the reasons which can be said to be germane so as to warrant the detention."*

15. In the instant case, it cannot be said that the grounds of detention disclose the grounds and reasons which weighed and considered by the detaining authority for exercising powers under Section 9(2) of the PASA Act.

No contemporaneous record of grounds and reasons which weighed with the detaining authority for not disclosing the identity of the anonymous witnesses seems to have been made, nor any affidavit-in-reply has been filed in this regard. The order of detention, has to be quashed, for the reason that except bald allegation about the genuineness of fear and consequent need for withholding the identity of witnesses, there is no material to lend support the exercise of powers under Section 9(2) of the PASA Act. Here the decision in the case of **Bai Amina vs. State of Gujarat and others [22 GLR 1186]**, which is considered by the Full Bench of this Court in **Chandrakant N.Patel vs. State of Gujarat (supra)**, may be profitably referred to. The question of personal liberty of a person is sacrosanct and the State authority cannot be permitted to take it away without following the procedure prescribed by law, otherwise it would be violative of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

16. With a view to salvage the situation, the learned AGP tried to take recourse of Section 6 of the Act, 1985.

By placing reliance on Section 6 of the Act, it is sought to be argued on behalf of the State that where a person has been detained in pursuance of an order of detention under section 3 on two or more grounds, such order of detention is deemed to have been made separately on each ground.

17. Although in our opinion section 6 of the Act will not save the situation for the State yet, as it has been relied upon, we may deal with the same. Section 6 of the Act reads thus:-

> *"6. Where a person has been detained in pursuance of an order of detention under section which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each ground and accordingly-*
>
> *(a)such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-*
>
> *(i)vague,*
>
> *(ii)non-existent,*
>
> *(iii)not-relevant,*
>
> *(iv)not connected or not proximately connected with such person, or*
>
> *(v)invalid for any other reason whatsoever, and it*

is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or the officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

18. The plain reading of the above quoted provision of section 6 of the Act would indicate that the same would not apply in cases where the order of detention suffers from the vice of total non-application of mind on the part of the detaining authority. On this issue, we can do no better than refer to a direct decision of the Supreme Court in the case of **Dharamdas Shamlal Agarwal** (supra) wherein the Supreme Court held as under:

"9. Though as per Section 6 of the Act the grounds of detention are severable and the order of detention shall not be deemed to be invalid or inoperative if one ground or some of the grounds are invalid, the question that arises for consideration is whether the detaining authority was really aware of the acquittal of the detenu in those two cases mentioned under Serial Nos. 2 and 3 on the date of passing the impugned order. It is surprising that the detaining authority who has specifically mentioned in the grounds of detention that the petitioner's cases 2 and 3 were pending trial on the date of passing the order of detention has come forward with a sworn

statement in reply, filed nearly three months after signing the grounds of detention, that he knew that the accused had been acquitted in both the cases. The averments made in paragraphs 12 and 13 in the affidavit in reply are not clear at what point of time the detaining authority came to know of the acquittal of the detenu in both the cases. At any rate, it is not his specific case that the fact of acquittal was placed before him for consideration at the time of passing the impugned order. But what the authority repeatedly states is that "each activity of the petitioner is a separate ground of detention" and adds further that "the fact that the petitioner was acquitted in Criminal Case No. 411/82 and 412/82 is of no consequence ". We are unable to comprehend the explanation given by t he detaining authority. It has been admitted by Mr. Potith at the sponsoring authority initiated the proceedings and placed all the materials before the detaining authority on 14.9.1988 by which date the petitioner had already be en acquitted in the above said two cases. Thus it is clear that either the sponsoring authority was not aware of the acquittals of those two cases or even having been aware of t he acquittals had not placed that material before the detaining authority. So at the time of signing the order of detention, the authority should have been ignorant of the acquittals. Evidently to get over the plea of the detenu in the writ petition in this regard for the first time in the counter, the detaining authority is giving a varying statement as if he knew about the acquittal of the detenu in both the cases. As ruled by this Court in Shiv Ratan Makim v. Union of India & Ors., [1985] Supp. (3) SCR 843 at page 848 "even if a criminal prosecution fails and an order of detention is then made, it would not invalidate the order of detention" because as pointed out by this Court in Subharta v. State of West Bengal, [1973] 3 SCC 250 "the purpose of preventive detention being different from conviction and punishment and subjective satisfaction being necessary in the former while proof beyond reasonable doubt being necessary in t he

latter", the order of detention would not be bad merely because the criminal prosecution has failed. In the present case, we would make stress, not on the question of acquittal but on the question of non-placing of the material and vital fact of acquittal which if had been placed, would have influenced the minds of the detaining authority one way or the other. Similar questions arose in Sk. Nizamuddin v. State of West Bengal, AIR 1974 SC 2353 in which the detention order was passed under the provisions of Maintenance of Internal Security Act. In that case the ground of detention was rounded on a solitary incident of theft of aluminium wire alleged to have been committed by the detenu therein. In respect of that incident a criminal case was filed which was ultimately dropped. It appeared on 'record that the history sheet of the detenu which was before the detaining authority did not make any reference to the criminal case launched against the petitioner, much less to the fact that the prosecution had been dropped or the date when the petitioner was discharged from the case. In connection with this aspect this Court observed as follows:

We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possible have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for t he present, but the criminal case should be allowed to run i ts full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to t he District Magistrate.

10. It is true that the detention order in that case was set aside on other grounds but the observation extracted above is quite significant. The above observation was subsequently approved by this Court in Suresh Mahato v. The District Magistrate, Burdwan and Others, AIR 1975 SC 720 and in Asha Devi v. Additional Chief Secretary to the Government of Gujarat & Ant., [1979] 2 SCR 215. In the latter case (i. e. Asha Devi), it has been pointed out:

" ..... if material or vital facts which would influence the minds of the detaining authority one way of t he other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal."

11. In Sita Ram Somani v. State of Rajasthan and Other s, [1986] 2 SCC 86 certain documents which were claimed to have been placed before the Screening Committee in the fir st instance were not placed before the detaining authority and consequently there was no occasion for the detaining authority to apply its mind to the relevant material. In the circumstances of that case, a principal point was raised before this Court that there was no application of mind by the detaining authority to those vital materials which we re with-held. This Court, while answering that contention observed thus:

No one can dispute the right of the detaining authority to make an order of detention if on a consideration of t he relevant material, the detaining authority came to t he conclusion that it was necessary to detain t he appellant.'But the question was whether the detaining authority applied its mind to relevant considerations. If it did not, the appellant would be entitled to be released.

12. From the above decisions it emerges that the requisite subjective satisfaction. the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. It is clear to our mind that in the case on hand, at the time when the detaining authority passed the detention order this vital fact, namely, t he acquittals of the detenu in case Nos. mentioned at serial Nos. 2 and 3 have not been brought to his notice and on t he other hand they were withheld and the detaining authority was given to understand that the trial of those cases we re pending. The explanation given by the learned counsel f or the respondents, as we have already pointed out, cannot be accepted for a moment. The result is that the non-placing of the material fact--namely the acquittal of detenu in the above-said two cases resulting in non-application of minds of the detaining authority to the said fact has vitiated t he requisite subjective satisfaction, rendering the impugned detention order invalid."

19. The above referred judgment of the Supreme Court in **Dharamdas Shamlal Agarwal** (supra) has been followed by this High Court in three decisions; (i) **Sabir Mohyuddin Shaikh Vs. Commissioner of Police, Surat and Others** reported in **1991(1) G.L.H. 165,** (ii) **Shankar Vishnubhai Sindhi Vs. Commissioner of Police, Baroda City, Baroda** reported in **2000(1) G.L.H. 443** and (iii)

Vikramsinh Pravinsinh Rana Vs. State of Gujarat & Another reported in **1988(2) G.L.H. 414.** In **Vikramsinh Pravinsinh Rana** (supra), this Court held as under:

> *"3. The petitioners have contended that they have been supplied the copy of the judgment delivered by the Court of Session, Amreli in Sessions Case No. 40 of 1985 but spine of the pages of the said judgment are not legible at all and, therefore, that amounts to non-communication of the grounds and that also adversely affected the right of the petitioners' making representations to the concerned authorities. In the affidavit-in-reply, the District Magistrate has stated that the copies are legible. We have ourselves looked into the copies of the judgment supplied to the detenu and we find that some of the pages are not legible at all for example pages 16 and 42 of the said judgment are not legible. When some of the pages of the judgment are not legible, that amounts to non-communication of the grounds and, therefore, the orders of detention and the continued detention are both vitiated. It is difficult to accept the submission of Mr. G. D. Bhatt, the learned Additional Public Prosecutor that Section 6 of the PASA Act can be pressed into service and the orders of detention can be sustained on other grounds. We find it difficult to agree with Mr. Bhatt that Section 6 of the PASA Act can be pressed into service in a case like the present one. Section 6 of the PASA Act comes into play only when the grounds are communicated but one or more of the grounds are found to be vague, nonexistent etc. When there is non-communication of some of the grounds to the detenus, the question of invoking of the provisions of Section 6 of the PASA Act does not arise. When some of the grounds are not communicated there is violation of Article 22(5) of the Constitution of India and. therefore, the detention becomes unconstitutional. We are supported with the view which we are inclined to take by the decision of the*

Division Bench of this Court rendered in Special Criminal Application No. 186 of 1987 (Coram, D. H. Shukla & P. M. Chauhan, JJ.) on 5-5-1987. In that case also it was a question of non-communication of the grounds and -the submission made on behalf of the State based on Section 6 of the PASA Act was rejected. The Division Bench of this Court referred to judgment of the Division Bench of the Bombay High Court in the case of Chandra Shekhar Ojha v. A. K. Karnik reported in 1982 Cri LJ 1642 where such a contention was raised on behalf of the State and rejected. The Division Bench of the Bombay High Court in that case relied upon the decision of the Supreme Court in the case of Kamla Kanhaiyalal Khushalani v. State of Maharashtra where the Supreme Court held that the documents and the material relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu pari passu the grounds of detention and if the documents and material are even supplied late, then the detenu is deprived of an opportunity of making an effective representation against the order or detention. The Bombay High Court observed that before the order of detention can be supported the constitutional safeguards must be strictly observed. In the case of Bhupinder Singh v. Union of India the detention was set aside on the ground that the right of making representation guaranteed under Article 22 of the Constitution of India was denied."

20. We are constrained to observe that the matters relating to the preventive detention should not be decided in a slip-shod manner. It is very essential to look into the order of detention including the grounds of detention and the other materials on record threadbare and with all seriousness to ensure that the personal liberty of the

detenue has been curtailed strictly following the procedure prescribed by law. At times even if the Court is not getting any proper assistance from the counsel appearing in the matter on behalf of the detenue, the Court owes a duty on its own to look into the matter threadbare. The concerned AGP appearing for the State also as an Officer of the Court owes a duty to assist the Court in the right manner and in the right direction. The endeavor of the concerned AGP appearing for the State should not be to defend the order of preventive detention at any cost even if he is convinced that the same is not in accordance with law.

21. In **Yumman Ongbi Lembi Leima vs. State of Manipur and others, (2012) 2 SCC 176**, the Supreme Court held that personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such

acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

22. In **V. Shantha vs. State of Telangana and Ors. AIR 2017 SC 2625,** the Supreme Court quashed the order of preventive detention passed under the Telengana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders Land Grabbers Act, 1986. The court noted: *"An order of preventive detention, though based on the subjective satisfaction of the detaining authority, is nonetheless a serious matter, affecting the life and liberty of the citizen under Articles 14, 19, 21 and 22 of the Constitution...If the power is misused, or abused for collateral purposes, and is based on grounds beyond the statute, takes into account extraneous or irrelevant materials, it will stand vitiated as being in colourable exercise of power."*

23. In our opinion, the learned Single Judge has failed to take notice of the two important aspects of the matter

referred to and discussed above. In such circumstances, we are left with no other option but to set aside the impugned order passed by the learned Single Judge.

24. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the learned Single Judge is hereby set aside. The Special Civil Application No.7442 of 2020 stands allowed. The order of detention passed by the District Magistrate, Rajkot District dated 12.05.2020 is hereby quashed and set aside. It is ordered that the detenue be set at liberty forthwith if not required in any other case. Consequently, the connected Civil Application also stands disposed of.

25. Before parting with this judgment, we would like to draw the attention of the State Government to the following as it may be helpful to the State Government and the Detaining Authority while initiating and dealing with the proceedings under the Laws of Preventive Detention.

(a) The detention order in writing, soon after it is passed, should be communicated to the detenue. The

detaining authority should also communicate the grounds of detention comprising of the basic facts, and the relied upon materials, in their entirety with the documents, statements, or other materials, not later than 5 days from the date of passing of the detention order.

(b) If two or more grounds are relied upon by the authority, each of the grounds should be separately and distinctly mentioned in the Detention order, as each one of the grounds if valid is sufficient to validate the order even if other grounds are vitiated or invalidated for any reason except in the case of non-application of mind.

(c) Every Detention order should be supplied with the translated legible version of all the scripts and documents relied upon, in the language he understands to make an effective representation.

(d) The detaining authority should specifically disclose with reference to each of the grounds for detention, which are all the documents relied upon and which are the documents casually or passingly

referred to in the course of narration of facts (including the bail orders) and should furnish the relied upon documents along with the detention order. If the detaining authority prefers to furnish the referred documents also, those materials also to be furnished in compliance with the first and third clause noted supra.

(e) So far as the bail applications and orders, and violation of bail conditions are concerned, if the detenue is on bail, if the bail application and bail orders, conditions therein are with reference to any vital ground or vital materials, placing of those materials though may not always be mandatory but such requirement depends upon the facts and circumstances of each case, which the detaining authority and later the Courts should very carefully examine whether the non placing of those materials in any way prejudiced the detenue. However failure to furnish any or all the referred documents shall not invalidate the order of Detention.

(f) If the order of detention is challenged, the courts also shall have to independently consider each ground, to ascertain on each ground whether the order is sustainable or not with reference to the guidelines herein referred.

(g) If any representation is submitted by the detenue before the Detaining Authority, addressing the same to the Detaining Authority, government, or to the Advisory Board, irrespective of the fact that, to whom it is addressed, the same should be as early as possible considered by the appropriate Government, before sending the papers to the Advisory Board. If the appropriate Government revokes the detention order and directs release of the detenue, there arises no question of sending the case papers to the Advisory Board.

(h) The Government shall within three weeks from the date of the detention order, place the order before the Advisory Board along with all the materials, grounds, representation if any made by the detenue,

along with any report by such officer made under sub-sec (3) of section 3 of the Act.

(i) The Advisory Board shall maintain records disclosing the date of receipt of the detention order and other materials, including the representation of the detenue. The Advisory Board shall consider all the materials placed before it, including the representation if any of the detenue, if necessary after calling for such further information as it deems it necessary, and if the person concerned desires to be heard, after hearing him in person and then send its report to the Government within Seven Weeks from the date of detention of the person concerned.

(j) After receipt of the report from the Advisory Board, the Government before passing any order of confirmation under section 12 of the act shall consider the representation of the detenue, if not already considered by it for reasons that, it was either directly submitted before the advisory board or the sub delegated Authority or received later after the

Advisory Boards report. Therefore, it is mandatory that appropriate Government shall consider the representation of the detenue, at least once at any stage before passing the final order of confirmation.

(k) The consideration of the representation if received before confirmation, order at any stretch of imagination, cannot be done after the confirmation of the detention order. It amounts to no consideration in accordance with law and procedure.

(l) If the Advisory Board has sent a report, stating that there is sufficient cause for the detention of the person concerned the Government, may confirm or revoke the said order. If the report says that there is no sufficient cause for detention, the Government, shall revoke the detention order and cause the person to be released forth with. It has no discretion to detain such person any more for any reason on the basis of such detention order.

(m) If the order is revoked either under section 12 or

under section 15 as the case may be, or the period of detention under the order is fully undergone by the detenue, in such an event the detaining authority shall forth with release such person from detention. Further the detaining authority shall not pass any extended or further detention order on the same grounds. However, if any subsequent order of detention has to be passed, it shall be by a separate order on fresh grounds after again following the procedure, but not on the grounds on which earlier order was passed.

(n) The claim of privilege by the Detaining Authority under Section 9(2) of the Act in public interest should be meaningful and not an eye wash or mere mechanical exercise. It is this mechanical exercise of the claim of privilege under Section 9(2) of the Act which compels the Court to quash the detention orders.

(o) It is obligatory on the part of the Sponsoring Authority to make true, full and correct disclosure of all the relevant facts relating to the detenue before the

Detaining Authority. If the detenue has been acquitted in any of the cases relied upon then the Sponsoring Authority owes a duty to bring such fact to the notice of the Detaining Authority along with the copy of the judgment and order passed by the Competent Court. In many matters the detention orders are quashed on this ground alone as it has been consistently held by the Supreme Court that the withholding of the vital fact that the detenue has been acquitted in some of the criminal cases relied upon against him would result in the non-application of mind of the Detaining Authority to the said fact and the same would vitiate the order of detention. The attention of the State Government and the Detaining Authority is drawn to the two decisions of the Supreme Court in **(i) Ramesh vs. State of Gujarat and others,** reported in **AIR 1989 SC 1881** and **(ii) Dharamdas Shamlal Agarwal vs. The Police Commissioner and another,** reported in **Judgments Today 1989 (1) SC 580**. **[See Smt. Jayamma vs. Commissioner of Police dated 08.03.2019].**

(p) Although there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case, yet there must be cogent materials before the authority passing the detention order that there was likelihood of his release on bail. We are saying so because if the detention order is challenged the detaining authority will have to satisfy the Court the following facts :

(1) The authority was fully aware of the fact that the detenue was actually in custody.

(2) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order

was necessary.

In case either of these facts does not exist the detention order would stand vitiated.

26. The Registry is directed to circulate this judgment to the following authorities :

(i) The Principal Secretary, Home Department, State of Gujarat.

(ii) The Principal Secretary, Revenue Department, State of Gujarat (who in turn shall circulate this judgment to all the District Magistrates/ Commissioners who are authorized under Section 3(2) of the PASA Act to pass orders of preventive detention).

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA / GAURAV THAKER