

Gujarat High Court

Sanjanben Shobharajsinh Sindha vs State Of Gujarat And Ors. on 30 July, 1993

Equivalent citations: (1993) 2 GLR 1648

Author: S Shah

Bench: S Shah, R Vyas

JUDGMENT S.D. Shah, J.

1. By this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the order of detention, dated August 24, 1992 passed by the Commissioner of Police under Section 3(2) of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'PASA Act').

2. A suspended police employee, as it appears from the grounds supplied, created an atmosphere of terror and horror in the city of Baroda. From the grounds of detention, which are supplied to the detenu, it becomes clear that the detenu is a person, who either by himself or as a leader of gang commits and has committed offences punishable under Chapter XVI or XVII of I.P. Code. Therefore, for the grounds which are supplied to the detenu, the impugned order of detention came to be passed under Section 3(2) of the PASA Act. It is not necessary for us, at this stage, to refer to the details of grounds as, in our opinion, the activities attributed to the detenu are so dangerous that invocation of the power was absolutely essential, and cannot be faulted on any discernible ground. However, we are at pains to notice that such a detenu is let-loose on the society by the Government purportedly in the exercise of power of temporary release without any justifiable cause so that when the innocent persons are in a mood to celebrate the religious festival, a reign of terror and atmosphere of havoc and panic is created by this detenu by causing grievous and fatal injuries to the persons and irreparable harm to their properties. The graphic and pictorial version of the propensity of the criminal deeds of this detenu is so alarming that his temporary release would defeat the very object of preventive detention.

3. Mr. A.R. Thakkar, learned Advocate for the petitioner-detenu has mainly challenged the continued detention of the detenu on the ground that despite the fact that serious involvement in heinous crimes is attributed to the detenu, when he applied for his release on parole on festival of Id between May 28 to June 3rd, 1993 the Government has by its order, dated May 28, 1993 released the petitioner-detenu implying thereby that it was not absolutely necessary to detain him with a view to preventing him from indulging in commission of heinous offences. His release at the time of festival of Id is still more objectionable as innocent persons in the society are once again exposed to his dangerous activities. It is unfortunate that the officers who are in-charge of detention of such criminals do not apply their mind at all to the object sought to be achieved by preventive detention of such detenus. The Division Bench of This Court in the case of Dilipkumar Amritlal Ganatra v. Dist. Magistrate, Rajkot reported in 1992 (2) GLR 1471 has deprecated the practice of the Government of releasing the PAS A detenus on parole and that too on religious festivals. The Division Bench of This Court in the said case has declared such an action of the Government to be absolutely illegal and ultra vires and with a view to seeing that wisdom might dawn upon the Government some day the Division Bench has also taken care to see that the cyclostyled copies of the judgment are made available to the Secretaries, Deputy Secretaries and the Under Secretary of

the Government. The Government has been so callous and indifferent to its positive duty to the innocent citizens and has been so active in extending its protective umbrella to the hardened criminals that it has shown little respect to the judgment of This Court and despite prohibitive directions issued by the Division Bench of This Court it has passed order of release of the detenu on parole. Once such a detenu is released on parole the very purpose of his preventive detention is frustrated, and his continued detention from the date of his release gets vitiated. We are extremely at pains to state that despite Red Signals issued by This Court and a note of caution or warning sounded from time to time the bureaucrats of the Home Department of the State Government have not taken any lesson from our repeated direction and has continued the practice of releasing of PASA detenues on parole during religious and social festivals so that they can within that short period of seven to ten days, once again, create atmosphere of horror and terror on innocent citizens during festivals only. The reasons for exercise of such powers are not made known to us. No clear and justifiable reasons are even recorded on the file by the competent authority. Except stating to the Court that on religious festival of Id the detenu was released nothing more is stated to the Court. No restrictive conditions are also imposed so as to control the detenu and his activities. We do not know, and we are, once again, not in a position to state as to how festival of Id is religious festival for a detenu who is not a Muslim or does not appear to be one. Be that as it may, we are extremely sorry to note that power of temporary release of such detenus detained for anti-social activities who are described as "dangerous persons" both by the Statute as well as by the detaining authority is exercised callously and as a matter of routine without appreciating the fact that such dangerous detenu would prove a menace to all if let-loose during festival. The power to release given to the Government under the said provision is to be exercised very sparingly and in rare cases, The detenus of such nature who are dangerous persons to the society and who create atmosphere of terror and horror by their very presence in the society are not intended to be let-loose on innocent citizens of the society by resort to the power of temporary release which is to be exercised in exceptional cases.

4. The Supreme Court has also in the case of Pushpadevi v. M.L. Wadhwan very clearly stated the law that temporary release even with stringent conditions is likely to frustrate the object of the very order of detention. Power of temporary release cannot be exercised frequently so as to run into conflict with the exercise of powers under Section 3 of the Act. If exercised frequently and in indifferent manner without soul-searching awareness it may frustrate the very purpose of order of detention. Such power is to be exercised in grave and emergent situations with necessary strict condition or vigilant surveillance only. To let-loose such dangerous persons on the society on religious festivals would tantamount to asking the entire society to remain ready to face and suffer the atmosphere of terror and horror which the detenu is sure to create on religious festival. In substance, this would amount to upholding the interests of the anti-social and dangerous persons by sacrificing the interests of innocent citizens of the society. If the purpose of preventive detention is to detain the detenu from carrying on or indulging in nefarious deadly criminal activities, his temporary release, for no justifiable cause would establish that there was no genuine need to detain him any longer. By exercising such power indiscriminately and without caring for the consequences of such release the respondents are rendering the continued detention of the detenus illegal and unnecessary. We are, therefore, constrained to quash and set aside the detention order as by his release the need to prevent his prejudicial activities, on the part of the Government has disappeared though those who are governed by the Government thought otherwise. The people at large in fact

had a sigh of relief with the detention of detenu but release of such deadly criminal was perhaps paramount to the authority exercising the power.

5. In the result, this petition succeeds. The respondent No. 3 is directed to release the petitioner-detenu forthwith unless otherwise required in connection with any other offences in accordance with law. Rule is made absolute accordingly.

6. Office is directed to send down the copy of this judgment to the Honourable the Home Minister and the Secretary of the Home Department forthwith.