

# Lokesh Sharma vs Union Of India on 6 July, 2020

**Author: Vikram Nath**

**Bench: Vikram Nath, J.B.Pardiwala**

C/LPA/302/2020

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 302 of 2020

In R/SPECIAL CIVIL APPLICATION NO. 1713 of 2020

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2020

In R/LETTERS PATENT APPEAL NO. 302 of 2020

With

R/LETTERS PATENT APPEAL NO. 303 of 2020

In SPECIAL CIVIL APPLICATION NO. 23147 of 2019

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2020

In R/LETTERS PATENT APPEAL NO. 303 of 2020

In SPECIAL CIVIL APPLICATION NO. 23147 of 2019

With

R/LETTERS PATENT APPEAL NO. 304 of 2020

In SPECIAL CIVIL APPLICATION NO. 22512 of 2019

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2020

In R/LETTERS PATENT APPEAL NO. 304 of 2020

In SPECIAL CIVIL APPLICATION NO. 22512 of 2019

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NITA CHUNILAL PARMAR

Versus

UNION OF INDIA

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Appearance:

MR S.H.SANJANWALA, SENIOR ADVOCATE WITH MR DILIP L

KANOJIYA (3691) for the Appellant(s) No. 1

MR DEVANG VYAS, ASG for the Respondent(s) No. 1,2,3,4

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 06/07/2020

COMMON ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA) 1 Since the issues raised in the captioned appeals are the same those were heard analogously and are being disposed of by this common order.

2 For the sake of convenience, the Letters Patent Appeal No.302 of 2020 is treated as the lead appeal.

3 This appeal under Clause 15 of the Letters Patent is at the instance of the original writ applicant and is directed against the order dated 14.05.2020 passed by the learned Single Judge of this Court declining to release the appellant herein on temporary bail.

3.1 In short, it appears that the appellant herein has been preventively detained under the order of detention dated 02.08.2019 bearing F No. PD- 12002/14/2019-COFEPOSA. The order of detention under the COFEPOSA has been challenged by the appellant herein by filing the Special Civil Application No.1713 of 2020. It appears that during the pendency of the writ application, the Civil Application No.4 of 2020 came to be filed by the appellant herein praying to release her on temporary bail on the ground that the appellant is a 65 years old lady and is ailing.

3.2 A learned Single Judge of this Court rejected the Civil Application No.4 of 2020 vide order dated 14.05.2020, which reads as under:

"Heard Mr.S.N. Sanjanwala, learned Senior Counsel appearing with Mr.Dilip Kanojiya, learned advocate for the applicant, Mr.Devang Vyas, learned Assistant Solicitor General of India for the Union of India,Mr.Nirjar Desai, Mr.Harsheel Shukla,learned advocates for the concerned respondents and Mr.Dhawan Jaiswal, learned AGP for the respondent - State.

I find no case to grant temporary bail to the applicant who is involved in serious offence of smuggling of huge quantity of gold. Hence, this application is rejected."

4 Being dissatisfied with the aforesaid order passed by the learned Single Judge declining to grant temporary bail, the appellant has come up before this Court with the present appeal.

5 On 16.06.2020, this Court passed the following order:

"Shri Shirish Sanjanwala, learned Senior Advocate assisted by Shri Dilip L. Kanojiya, learned advocate for the appellants states that the main matter challenging detention order is fixed for tomorrow before the learned Single Judge. As such, he prays that these matters may be listed after some time. These matters relate to grant of temporary bail during the period of detention. Although we are not inclined to accept the request, but since Mr. Sanjanwala has requested, we are fixing these matters after two weeks.

Let all these matters be listed on 01.07.2020."

5.1 Today, when the matter is taken up for hearing, Mr. S.H.Sanjanwala, the learned Senior Counsel appearing for the appellant pointed out that the Special Civil Application No.1713 of 2020 has been heard finally and the judgment is kept reserved. Mr. Sanjanwala, would submit that as the judgment has now been kept reserved, he may not press this appeal. However, Mr. Sanjanwala, very vehemently submitted that this court should observe that the impugned order passed by the learned Single Judge declining to grant temporary bail to his client is not in tune with the Constitution Bench decision of the Supreme Court in the case of Sunil Fulchand Shah v. Union of India and others reported in AIR 2000 SC 1023. Mr. Sanjanwala invited the attention of this Court to the observations made by the Supreme Court as contained in para 19(4), which reads thus:

"19(4) That the Courts cannot, generally speaking, exercise the power to grant temporary release to detenus, on parole, in cases covered by COFEPOSA during the period an order of detention is in force because of the express prohibition contained in Clause (6) of section 12. The bar of judicial intervention to direct temporary, release of a detenu would not, however effect the jurisdiction of the High Courts under Article 226 of the Constitution or of this Court under Articles 32,136,142 of the Constitution to direct the temporary release of the detenu, where request of the detenu to be released on parole for a specified reason and/or for a specified period, has been, in the opinion of the Court, unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made. That jurisdiction, however, has to be sparingly exercised by the Court and even when it is exercised it is appropriate that the court leaves it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu;

6 Mr. Devang Vyas, the learned Assistant Solicitor General of India while opposing this appeal submitted that this Court may not go into the merits as the judgment in the main writ application is awaited.

7 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we need not adjudicate this appeal on merits as the main matter has already been heard and the judgment is now kept reserved. If the writ application is allowed, the detenu would be set free and if rejected then it is always open for the appellant herein to avail of appropriate legal remedy before the appropriate forum in accordance with law.

7.1 We are not going into the question whether the impugned order passed by the learned Single Judge is in consonance with the decision of the Supreme Court in the case of Sunil Fulchand Shah (supra) as asserted by the learned Senior Counsel appearing for the appellant.

8 With the aforesaid observations, this appeal along with Civil Application stand disposed of.

9 As the issues involved in the connected appeals are the same, those appeals are also disposed of in the aforesaid terms along with their respective Civil Applications.

(VIKRAM NATH, CJ) (J. B. PARDIWALA, J) Vahid