breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned Lower Court having jurisdiction to try the case.

29. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law. At the trial, learned Trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

***Result*:-** Application allowed.

ABC 2017 (I) 101 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(Harsha Devani & Biren Vaishnav, JJ.)
Special Criminal Application (Habeas Corpus) No. 4937 of 2016
Decided on 23 December, 2016

HAMIRBHAI DANABHAI GABU ***- Appellant(s).***

Versus

STATE OF GUJARAT & ORS. ***- Respondent(s).***

Law Covered*:-** ***(A) Constitution of India — Article 21— Right to life & personal liberty — Detenue — release order — Dispatched by fax & ordinary post — Detenue not released due to non receipt of order — Additional mode of communication i.e. mobile phone/VHF wireless communication — Held, there is no reason why such modes of communication, in addition to the written mode should not have been or be adopted in confirming receipt of Release/Revocation Orders— the stand of the State and its Officers exhibits the casual manner— the values of personal liberties enshrined u/Art 21 not respected— the State acted without any sense of responsibility and genuine concern for the liberty of the subject —The action/omission led to a flagrant infringement of the fundamental right of the detenue who continued to be under illegal incarceration of the State — Compensation awarded. (Para 11, 12.1 & 13)

January 2017

(B) Constitution of India — Article 21— Right to life & personal liberty — Duty of the State — State is a custodian of law and order and should, therefore, have the greatest respect for personal liberty of its citizens— Custodians of law and order should not become depredators of civil liberty as it is their duty to protect and not abduct. (Para 12.1)

(C) Constitution of India — Article 21— Right to life & personal liberty — Detenue — Release order — Not executed due to non receipt of communication — Held, the mischief or malice under the pretext of having not received such communications which is advanced as an excuse cannot wash away or wish away the responsibility of the State to set its citizen free— the responsibility was with the authorities and the detenue was deprived of his valuable constitutional right— Compensation awarded to the detenue. (Para 12 & 13)

(D) Constitution of India — Article 21— Right to life & personal liberty of detenue — Protection of — Duty of the State — Held, The duty of care on the part of the State is strict and admits of no exceptions. (Para 13)

(E) Constitution of India — Article 21— Right to life & personal liberty of detenue — Depriving of — Accountability of — Held, State is responsible if the person in custody of the police is deprived of his right to life and liberty except in accordance with the procedure established by law. (Para 13)

(F) Constitution of India — Article 21— Right to life & personal liberty — Illegal detention — Remedy for — Held, the only remedy, therefore, is that the detenue has to be compensated for his unlawful detention at the hands of the instrumentalities of the State. (Para 13)

(G) Constitution of India — Article 21— Right to life & personal liberty — Established violation of — Held, A citizen complaining of infringement — cannot be told that he cannot get relief under public law by the courts exercising writ jurisdiction. (Para 13.1)

(H) Constitution of India — Article 21— Right to life & personal liberty — Scope of — Held, any form of degrading treatment would fall within the inhibition of Article 21. (Para 13.1)

Facts:- *An order of detention was passed by the Commissioner of Police under the provisions of The Gujarat Prevention of Anti Social Activities Act. It was the case of the detaining authority that there were four*

FIRs registered against the detenue, and he was a 'dangerous person' as defined under the PASA, his detention was necessary. The State Government, on consideration of the detention order and the supporting documents, on which the detaining authorities had relied upon, found that there was no sufficient ground for passing an order of detention against the detenue and therefore the order of detention was not approved. The State Government, through its Section Officer in the Home Department, informed the Superintendent, Central Jail through a Fax, a copy of which was also forwarded for information to the Commissioner of Police informing the Superintendent that, as the order of detention was not approved, the detenue may be released forthwith unless he is required to be detained in the jail under the order of any competent court.

However, since the detenue was not released even after one month, though not required in any other case, he was constrained to move the honourable Gujarat High Court by way of the present petition for the relief seeking a writ of Habeas Corpus praying for his release from illegal confinement. The hon'ble Court observed that in the present case the State and its Officers have shown scant regard for the values of personal liberty. The State was directed to pay the compensation of ` 50000/- to the detenue, in addition the cost of the petition was also quantified.

Law of relief:- ***(i) A citizen complaining of infringement of fundamental rights cannot be told that he cannot get relief under public law by the courts exercising writ jurisdiction.***

(ii) The only remedy for illegal detention is that the detenue has to be compensated for his unlawful detention.

(iii) Additional mode of communication i.e. mobile phone/ VHF wireless communication in addition to the written mode should be adopted in confirming receipt of Release/Revocation Orders.

Held:- The copy of the fax dated 06.06.2016 is on record. On reading the same, it becomes apparent that the fax was dispatched to the Superintendent, Lajpore Central Jail and was forwarded for information to the Commissioner of Police, Rajkot city also. From the Inward Stamp No. 4062, it is apparent that the Rajkot city police received the order also on 06.06.2016. This court is not impressed by the defence, which the authorities have sought to advance, that the fax was not received by the Central Jail at Lajpore. A lame defence is advanced to say that the fax machine could only store 60 calls in its memory and therefore the record of 06.06.216 could not be obtained. It is obvious that such a defence is an afterthought in view of the fact

that the report explains that henceforth they have "started obtaining system generated receipt" of each message sent by fax from SB-III Branch. The question that remains unanswered is, why this practice, which is the normal practice when fax machines are operated was not followed till date. The casualness in which the revocation orders of the detenues are treated also becomes apparent from reading the statement of constable Mr. Jignesh A. Desai. The reading of the statement reveals that such orders are dispatched through ordinary post without any special remarks and are sent with other documents in one envelope in a bundle to the post office. Only such communications which have special instructions are sent by R.P.A.D or Speed Post. Revocation Orders which seek to set a detenue at liberty are, therefore, ordinary communications and are, therefore, dispatched by "Ordinary Post" as they do not merit a remark of any special instruction. (Para 11)

From the affidavits filed on and behalf of the State and the Jail authorities and on reading the report of inquiry which apparently is a cover up to shield the causal and the cavalier manner in which the State authorities treat the orders of revocation and the consequential release of a detenue, make it apparent that the State, through its officers, have not thought it fit to respect the values of personal liberties enshrined under Article 21 of the Constitution of India. They have acted in a very causal way and we consider it a great pity that they have acted without any sense of responsibility and genuine concern for the liberty of the subject. State is a custodian of law and order and should, therefore, have the greatest respect for personal liberty of its citizens. Custodians of law and order should not become depredators of civil liberty as it is their duty to protect and not abduct. In the case on hand, the mischief or malice under the pretext of having not received such communications which is advanced as an excuse cannot wash away or wish away the responsibility of the State to set its citizen free. Illegal incarceration of the detenue on hand, has continued under the pretext that such release/revocation orders do not merit adequate attention as they are not "special instructions" and are, therefore, dispatched by ordinary post and not by R.P.A.D or Speed Post according to such officers and the delay, therefore, according to them is justified. (Para 12.1)

We do not have the slightest doubt that the responsibility was with the authorities and the detenue was deprived of his valuable constitutional right and a fundamental right under Article 21 of the

Constitution of India. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and State is responsible if the person in custody of the police is deprived of his right to life and liberty except in accordance with the procedure established by law. The action/ omission of the authorities, in the facts of the present case, led to a flagrant infringement of the fundamental right of the detenue who continued to be under illegal incarceration of the State. The only remedy, therefore, is that the detenue has to be compensated for his unlawful detention at the hands of the instrumentalities of the State and, therefore, the damage done to the detenue can only be suitably repaired by its officers by a direction to the State authorities to pay compensation. (Para 13)

A citizen complaining of infringement of the indefeasible right under Article 21 of the Constitution of India cannot be told that for the established violation of the Fundamental Right to life and liberty, he cannot get relief under public law by the courts exercising writ jurisdiction. It needs no emphasis that any form of degrading treatment would fall within the inhibition of Article 21. The present case on hand, therefore, is one such case where the State and its Officers have shown scant regard for the values of personal liberty. (Para 13.1)

Counsel:- ***For Appellant(s):*** *Mr Apurva K Jani, Advocate.*

For Respondent(s): *Mr Himanshu K Patel, Addl Public Prosecutor.*

Cases Referred:-

1. *Bhim Singh v. State of J&K : (1985) 4 SCC 677. (Para 1)*
2. *Visamanbhai D. Dhola vs. The State of Gujarat through Secretary and Anr.; 2014(1) GLH 764. (Para 8)*
3. *Sunil Batra vs Delhi Administration. (1978) 4 SCC 494. (Para 12)*

JUDGMENT

BIREN VAISHNAV, J.: - **"State, a custodian of law and order, should have the greatest respect for the personal liberty of citizens. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not abduct".**

These sentiments expressed by the Supreme Court in the case of ***Bhim Singh v. State of J&K : (1985) 4 SCC 677*** have been ignored, in the facts of the present case, which enfolds thus:

1. Shivbhai Danabhai Gabu, a detenue, through his cousin, Hamirbhai Danabhai Gabu has invoked the jurisdiction of this court, under Article 226 of the Constitution Of India, by way of a writ of Habeas Corpus. The case of the petitioner is that the detenue, Shivbhai Danabhai Gabu, was under illegal incarceration of the authorities of the State, as, though his order of detention was revoked by a communication dated 06.06.2016 he was still not released from detention. The petitioner's case is, that, once the order of detention was revoked, the detenue, ought to have been set at liberty forthwith. Incarceration beyond the period of time was an infringement of Article 21of the Constitution of India.

2. Notice was issued to the State, on 12.07.2016 and further hearing was kept on 15.07.2016. On 18.7.2016, it was brought to our notice by the learned advocate for the petitioner that the detenue was released on 12.7.2016.

2.1 Having been released from detention on 12.7.2016 and as the detenue himself was present in Court, the State, defended through Mr. Himanshu Patel, learned Additional Public Prosecutor, requested the court that the petition would no longer survive, in view of this subsequent development and may be disposed of accordingly. On the other hand, Mr. Apurva Jani, learned advocate for the petitioner pointed out that, in addition to the prayer seeking release from illegal detention, the petitioner had prayed for being suitably compensated for such illegal detention for the period from 06.06.2016 to 12.07.2016, which apparently according to the petitioner's counsel was without any justifiable cause.

3. A brief factual background would be necessary in order to appreciate the controversy on hand. An order of detention was passed on 27.05.2016 by the Commissioner of Police, Rajkot City under the provisions of The Gujarat Prevention of Anti Social Activities Act, 1985 detaining Shivbhai Danabhai Gabu. It was the case of the detaining authority that there were four First Information Reports registered against the detenue, and as Shivbhai was a 'dangerous person' as defined under the PASA ,his detention was necessary. The detenue Shivbhai Danabhai Gabu on 10.6.2016, challenged the order of detention before this court by filing Special Civil Application No. 9168 of 2016.

3.1 The State Government, on consideration of the detention order and the supporting documents, on which the detaining

authorities had relied upon, found that there was no sufficient ground for passing an order of detention against the detenue Shivbhai and therefore the order of detention was not approved. The State Government, through its Section Officer in the Home Department, Shri P.H.Gandhi, informed the Superintendent, Central Jail, Surat through a Fax sent on 6.6.2016, a copy of which was also forwarded for information to the Commissioner of Police, Rajkot informing the Superintendent that, as the order of detention was not approved, the detenue may be released forthwith unless he is required to be detained in the jail under the order of any competent court. This communication was placed on record in Special Civil Application No.9168 of 2016 on 14.06.2016, by the learned Assistant Government Pleader and the court recorded the order as under:

> " Learned AGP Mr Bharat Vyas places written communication dated 6.6.2016 and states at the bar that the detention order in question came to be revoked by the competent authority and the petitioner is ordered to be released and,therefore the present petition has become infructuous. The said communication is ordered to be taken on record.
>
> In view of the statement made at bar,present petition stands disposed of as having become infructuous."

3.2 The obvious consequence of the order of revoking the detention, should have been, the immediate release of the detenue, however, since the detenue was not released till 11.07.2016, though not required in any other case, he was constrained to move this court by way of this petition for the relief seeking a writ of Habeas Corpus praying for his release from illegal confinement of the respondents No. 1 to 3 authorities.

3.3 Admittedly, as, Shivbhai Danabhai Gabu was under illegal incarceration from 6.6.2016 to 12.7.2016, this Court by an order dated 18.07.2016, directed the Additional Secretary, Law and Order, Home Department, Government of Gujarat to make an inquiry into the matter and submit a report as to why the lapse of releasing the detenue occurred and the detenue was kept in illegal confinement for more than a month, though the order of release was passed on 06.06.2016.

3.4 Pursuant to the order so passed, the Learned Additional Public Prosecutor on 22.08.2016, placed on record, an inquiry report

under the signature of Mr. Sandip Kumar, Additional Secretary to the Government, Home Department explaining the circumstances under which the detenue Shivabhai continued under detention till 12.07.2016, though his detention was revoked on 06.06.2016.

3.5 The inquiry report in brief states as under:

(I) The order of detention was revoked on 06.06.2016.
(II) The decision was conveyed to the Superintendent, Lajpore Central Jail, Surat by a fax message dated 06.06.2016, by which the jail authorities were directed to release the detenue forthwith.

(III) The order was also sent by ordinary post to the jail authorities on 07.06.2016.

(IV) The release order was also conveyed to the Commissioner of Police, Rajkot (the detaining authority) on 06.06.2016 by fax message and by ordinary post.

3.6 The report further states that, it was only on 12.07.2016 that it came to the knowledge of the jail authorities that the order of detention in case of Shivbhai Danabhai Gabu was revoked. According to the explanation tendered in the Report, it was only when the Jail Authorities did not find the name of Shivbhai in the list of detenues, whose hearing was scheduled before the Advisory Board on 15.7.2016, did the Jail Authorities confront the Home Department by calling up Shri P.H.Gandhi, Section Officer, on his Mobile, as to the reason for not including the name of Shivbhai in such list. The State Government then noticed that though it had ordered revocation of the detention in the case of Shivbhai, the jail authorities had not released the detenue on the ground that the release order, sent by Fax on 6.6.2016 and sent by Ordinary Post on 7.6.2016, was not received by the Lajpore Jail at Surat. Having realised that the detention was not justified, in view of its revocation on 6.6.2016, the detenue was released on 12.7.2016. It was under these circumstances that Shivbhai who was immediately released on 12.07.2016 remained present before this Court on 15.7.2016.

4. Together with the inquiry report, statements of (1) Shri. Pushpak Gandhi, Section Officer SB-III Branch, Home Department, (2) Shri Jayesh Chaudhary, Office Assistant, SB- III Branch, Home Department,(3) Shri Jignesh Desai,Police Constable,Registry Section,Home Department and (4) Shri Paresh Patel, Jailor Grade - 2,

Lajpore Central Jail have been placed on record. The reading of these statements reveal that:

a

(A) According to Shri Pushpak Gandhi, the communication dated 06.06.2016 was dispatched by Fax to the Superintendent, Central Jail, Surat and Commissioner Of Police, Rajkot. This order was also sent by ordinary post on 07.06.2016.

b (B) According to Shri Jayesh Chaudhary, he has dispatched the order to the Lajpore Central Jail, Vadodara Central Jail and the office of the Commissioner of Police, Rajkot city on 06.06.2016 by fax followed by ordinary post and has accordingly made an entry in the diary which is maintained in the Branch through the confidential c Registry section of the Home Department.

Be it noted that the statements of both these officers do not reveal whether,any of them,or either of them, sought confirmation of the Fax having been received.

d (C) Shri Jignesh Desai in his statement states that all ordinary posts and communications are dispatched by him in an envelope and by franking the amount on each envelope, and such envelopes are sent through ordinary post in one bundle to the post office. Only such communications which have any special instructions and are catalogued in the register, are sent through R.P.A.D or Speed Post. e According to him, since the communication like the present one dated 06.06.2016 releasing the detenue did not carry any special remarks, the same was dispatched through ordinary post. He further states that there is no practice to maintain any register for ordinary post for a long time.

f (D) On reading the statement of Pareshbhai Patel, Jailor, Grade-2 of the Lajpore Central Jail, it appears that there is no separate fax machine provided to the jail authorities. A fax machine is installed at the Senior Jailor's branch and all communications received on such fax machines are received by the fax operator and submitted to the g administrative head of the office for marking to the respective branch. According to this official, as no communication was received from the Home Department to review the detenue's case, a phone call was made to the Home Department in this regard by Shri Baria on 12.07.2016 when it came to the notice of the jail authorities that the h detenue Shivbhai Gabu's detention was not approved and that the release order was faxed to the jail authorities on 06.06.2016 itself, in addition to the ordinary post on 07.06.2016. Shri Patel states that no

communication by fax or by ordinary post was received by the jail authorities and it was, therefore, only when a call was made to the Home Department on 12.07.2016 did the authorities notice the fact of the detenue's revocation on 06.06.2016. Shri Patel further explains that the jail uses a canon fax machine and only 60 calls can be saved in the memory and so the details of the memory on 06.06.2016 cannot be obtained. No fax from telephone on 079-23250570 of the SB-III Branch of the Home Department was received by the jail authorities.

5. The report of the inquiry so filed reveals the fact that two orders of detention were passed on 27.5.2016, by the Commissioner of Police Rajkot, one, detaining Sanjaybhai Gabu and the other detaining his cousin Shivbhai Danabhai Gabu. By separate orders dated 06.06.2016, both the detention orders were not approved by the Government. As Sanjaybhai Gabu was lodged in Vadodara Jail, a communication was faxed to the Superintendent, Central Jail Vadodara and on receipt of Fax, Sanjaybhai was released on the same day. The Fax sent to the Lajpore Central Jail on 6.6.2016, in case of the present detenue Shivabhai, according to the report ,was not received at the Surat Jail and therefore Shivbhai was not released.

5.1 From the stamp affixed on the release order in the case of Shivabhai Gabu, it appears that Commissioner of Police, Rajkot, the detaining authority received the order on the same date i.e. 06.06.2016. There is reason therefore, to believe that, the detaining authority would also have received Sanjaybhai's release order too. Evidently, therefore, though the detaining authority did receive revocation orders of both the detenues, only Sanjaybhai at Vadodara Jail could be released whereas Shivbhai, lodged at Surat Jail could not be released as the jail authorities did not receive the fax.

5.2 Together with the report referred to hereinabove, the extract of the Register of fax messages for the period from 06.06.2016 to 12.07.2016 and the extract of Register of ordinary post have been filed by the officer concerned, thereby justifying the claim that, neither the fax dated 06.06.2016 nor the ordinary post dated 07.06.2016 was received by the Lajpore Central Jail, Surat. According to the Report, only when the jail authorities found the detenue's name missing from the communication dated 11.07.2016, meant for the Advisory Board, a call was made to the Home Department to Shri P.H.Gandhi .

5.3 The Report, therefore, according to Shri Himanshu Patel, learned Additional Public Prosecutor, exonerates the State authorities

and its Officers, as no fault can be found for incarceration of the detenue beyond 6.6.2016 at the Surat Jail, as, the Jail, only for the first time on 12.7.2016 did come to know of the fact of the revocation of detention.

6. Mr. Apurva Jani, learned advocate for the petitioner contended that even if the report is accepted at its face value, the averment in the petition made by the petitioner in para 3.5 of the petition is not denied. Mr Jani has drawn the attention of the court to Para 3.5 of the petition which reads as under:

> "5.2 It is submitted that despite such order of release, the reposndent no. 4 was not released. It is submitted that thereafter the petitioner had personally visited the jail which is under the respondent no. 3 to find out as to why his brother is not being released along with a copy of the order passed by this Hon'ble Court in Special Civil Application No. 9168 of 2016 along with five other relatives of him on 26.06.2016, however, he was informed that the respondent no. 4 is not to be released and the order which was shown merely showed that a writ has been filed.

7. Faced with this assertion in the petition, an additional report was filed on 09.09.2016 by the signatory of the earlier report, placing on record the copies of the jail register to prove that there is no evidence that the relatives of the detenue visited the Lajpore Central Jail on 20.06.2016.

8. In context of the prayer made in the petition seeking adequate compensation for the illegal detention of the detenue Shivbhai Danabhai Gabu and on reading the two reports, Mr. Jani, learned advocate for the petitioner, sought to address us on the question of compensation that can/should be awarded to the detenue. Mr. Apurva Jani, learned advocate for the petitioner submitted that on reading the inquiry report it has become apparent that, though the order of detention was revoked on 06.06.2016, the detenue could be released only on 12.07.2016. The omission to release the detenue was only on account lack of inter-se communication or lapse on the part of the authorities, for which the detenue could not be deprived of his fundamental right under Article 21 of the Constitution of India. Personal liberty is a very coveted right and the State authorities cannot be permitted to thwart such a right on such flimsy grounds such as the one advanced in the report. Mr. Jani,

therefore, requested the court that as Article 21 in the case of detenue was violated and the detenue was deprived of personal liberty, the prayer in the petition for compensation ought to be granted. Mr. Jani has relied upon a judgement in the case of ***Visamanbhai D. Dhola vs. The State of Gujarat through Secretary and Anr. reported in 2014(1) GLH 764.*** According to Mr. Jani, the court in the case of Visamanbhai Dhola (supra), having found that the order of detention was not proper and that the powers were misused, had awarded compensation based on the law of torts. Mr. Jani has, in particular, drawn the attention of this court to paragraphs 15, 16, 17 & 18 of the judgement and contended that in exercise of powers under Article 226 of the Constitution of India, the detenue is entitled to compensation from the respondent State and his officers.

9. Mr. Himanshu Patel, learned Additional Public Prosecutor has sought to defend the State authorities and contended that the authorities have not, in any manner, sought to infringe the personal liberty of the detenue. He further contends that it is evident from the report and the explanation tendered in the affidavits filed by the Additional Secretary Home Department and by Shri S.L. Dhusa, Senior Jailor, Lajpore Central Jail, Rajkot, that the order of revocation dated 06.06.2016 was not received by the jail authorities from the Home Department and, therefore, no fault can be found for not releasing the detenue promptly though the order of revocation was passed on 06.06.2016. Mr. Patel, learned Additional Public Prosecutor further contends that it was only when the jail authority at Surat received a fax message at 1533 hours on 11.07.2016 from the Home Department showing the details of the cases of PASA detenues for which the Advisory Board meeting for review was to be held on 15.07.2016, wherein the name of the detenue Shivbhai did not appear, the jail authorities, contacted Shri P.H. Gandhi, Section Officer, Home Department on his Mobile and it was then that the jail authorities were made known of the revocation order dated 06.6.2016. Mr. Patel, therefore, contends that as soon as the jail authorities came to know of this fact, the jail authorities promptly released the detenue Shivbhai on 12.07.2016. According to Mr. Patel, therefore, there was no lapse on the part of the jail authorities in not releasing the detenue.

10. It is evident on reading the contents of the reports filed before this court that, the only plausible defence, if it can be called so, on behalf of the State and the jail authorities respectively is, that though the order of detention was revoked on 06.06.2016, and the

communication was sent by fax to the Superintendent of Central Jail on the same day, the jail authorities did not receive the same. According to the Jail Official, no Fax was received on the Fax Machine installed at the Jail. The defence of the jail authorities is also that even the ordinary post dated 07.06.2016 dispatched purportedly by the Dispatch Clerk was not received by the jail authorities and, therefore, the detenue continued to be under illegal incarceration for a period of more than 30 days on this account.

11. The copy of the fax dated 06.06.2016 is on record. On reading the same, it becomes apparent that the fax was dispatched to the Superintendent, Lajpore Central Jail and was forwarded for information to the Commissioner of Police, Rajkot city also. From the Inward Stamp No. 4062, it is apparent that the Rajkot city police received the order also on 06.06.2016. This court is not impressed by the defence, which the authorities have sought to advance, that the fax was not received by the Central Jail at Lajpore. A lame defence is advanced to say that the fax machine could only store 60 calls in its memory and therefore the record of 06.06.216 could not be obtained. It is obvious that such a defence is an afterthought in view of the fact that the report explains that henceforth they have "started obtaining system generated receipt" of each message sent by fax from SB-III Branch. The question that remains unanswered is, why this practice, which is the normal practice when fax machines are operated was not followed till date. The casualness in which the revocation orders of the detenues are treated also becomes apparent from reading the statement of constable Mr. Jignesh A. Desai. The reading of the statement reveals that such orders are dispatched through ordinary post without any special remarks and are sent with other documents in one envelope in a bundle to the post office. Only such communications which have special instructions are sent by R.P.A.D or Speed Post. Revocation Orders which seek to set a detenue at liberty are, therefore, ordinary communications and are, therefore, dispatched by "Ordinary Post" as they do not merit a remark of any special instruction.

11.1 On reading the fax message dated 06.06.2016 which is attached with the report and also which is placed on record of the paper book of Special Civil Application No. 9168 of 2016, it is revealed that not only was the same received by the Commissioner of Police, Rajkot city on 06.06.2016, but it also carries the telephone nos. particularly mobile number of Shri P.H. Gandhi. From the affidavit in

reply filed by the Senior Jailor Shri S.L Dhusa and on reading para 7 thereof, it is apparent that the jail authorities contacted Shri Gandhi on his mobile number on 12.07.2016, not finding the name of the detenue Shivbhai on the list of the detenues whose hearing was scheduled on 15.07.2016 at the Advisory Board. Apparently, therefore, judicial notice can be taken of the fact that the office of the detaining authority, the office of the revoking authority and the office of the authority wherein the detenue was confined had an additional mode of communication i.e. mobile phone/VHF wireless communication through which the receipt of written communications could be inter-se confirmed. If the jail officials could contact Shri P.H.Gandhi on his mobile phone to confirm the fact of the missing name of a detenue from the list of detenues, whose hearing was scheduled before the Advisory Board, there is no reason why such modes of communication, in addition to the written mode should not have been or be adopted in confirming receipt of Release/ Revocation Orders. Evidently, it appears that the release orders, therefore, did not merit such attention at the hands of these authorities. This stand of the State and its Officers exhibits the casual manner in which a revocation order is sought to be treated in comparison to a formal order enlisting the list of detenues' hearing before the Advisory Board. But for the time bound procedure to be followed for the hearing before the Advisory Board, the fact of the detenue's release order, wouldn't have possibly seen the light of the day beyond 12.07.2016.

12. It is worthwhile to quote few lines from the case of ***Sunil Batra vs Delhi Administrationreported in (1978) 4 SCC 494*** wherein the Supreme Court quoted from a white paper entitled "People in Prison" published by the British Government in 1969 which reads thus:

> "A society that believes in the worth of individual human beings can have the quality of its beliefs judged, atleast in part, by the quality of its prison and probation services and of the resources made available to them"

12.1 From the affidavits filed on and behalf of the State and the Jail authorities and on reading the report of inquiry which apparently is a cover up to shield the causal and the cavalier manner in which the State authorities treat the orders of revocation and the consequential release of a detenue, make it apparent that the State, through its

officers, have not thought it fit to respect the values of personal liberties enshrined under Article 21 of the Constitution of India. They have acted in a very causal way and we consider it a great pity that they have acted without any sense of responsibility and genuine concern for the liberty of the subject. State is a custodian of law and order and should, therefore, have the greatest respect for personal liberty of its citizens. Custodians of law and order should not become depredators of civil liberty as it is their duty to protect and not abduct. In the case on hand, the mischief or malice under the pretext of having not received such communications which is advanced as an excuse cannot wash away or wish away the responsibility of the State to set its citizen free. Illegal incarceration of the detenue on hand, has continued under the pretext that such release/revocation orders do not merit adequate attention as they are not "special instructions" and are, therefore, dispatched by ordinary post and not by R.P.A.D or Speed Post according to such officers and the delay, therefore, according to them is justified.

13. We do not have the slightest doubt that the responsibility was with the authorities and the detenue was deprived of his valuable constitutional right and a fundamental right under Article 21 of the Constitution of India. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and State is responsible if the person in custody of the police is deprived of his right to life and liberty except in accordance with the procedure established by law. The action/ omission of the authorities, in the facts of the present case, led to a flagrant infringement of the fundamental right of the detenue who continued to be under illegal incarceration of the State. The only remedy, therefore, is that the detenue has to be compensated for his unlawful detention at the hands of the instrumentalities of the State and, therefore, the damage done to the detenue can only be suitably repaired by its officers by a direction to the State authorities to pay compensation.

13.1 A citizen complaining of infringement of the indefeasible right under Article 21 of the Constitution of India cannot be told that for the established violation of the Fundamental Right to life and liberty, he cannot get relief under public law by the courts exercising writ jurisdiction. It needs no emphasis that any form of degrading treatment would fall within the inhibition of Article 21. The present case on hand, therefore, is one such case where the State and its Officers have shown scant regard for the values of personal liberty.

14. That takes us to the question as to how the grave injustice which has been perpetrated upon the detenue Shivbhai Danabhai Gabu can be rectified. Taking into consideration the submissions of the respective parties and based on the available material placed on record, it transpires that the fact that the detenue has remained under illegal incarceration/detention at the hands of the authorities and State for a period of more than a month is established. We, therefore, deem it fit to direct the State to award a compensation of Rs. 50,000/- to the detenue Shivbhai Danabhai Gabu in addition to the costs of this petition quantified at Rs.10,000/-.

15. For the foregoing reasons, the petition is allowed. The State is directed to pay compensation of Rs.50,000/- to the detenue Shivbhai Danabhai Gabu in addition to the costs of this petition quantified at Rs.10,000/-. Rule is made absolute accordingly.

***Result*:-** Petition allowed.