

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 338 OF 2015
[Arising out of S.L.P. (Crl.) No.1512 of 2015
(D.No. 5077/2015)]

Teesta Atul Setalvad and Anr. ... Appellant

Versus

State of Gujarat ... Respondent

ORDER

Dipak Misra, J.

The present appeal, raises the seminal issue whether the appellants, the wife and husband, trustees of two trusts, namely, "Citizens for Justice and Peace" (CJP) and "Sabrang Trust", should be taken into custody for custodial interrogation on the bedrock of allegations made by one Ferozkhan Saeedkhan Pathan, alleging that the trustees along with others had raised few crores of rupees as donations from certain donors from India and

abroad by projecting the plight of the affected persons of Gulbarga Society and by entering into a conspiracy, and has promised that they would build a “museum” in honour of the 2002 riot victims and also told them not to sell their land with the assurance that the trustees would arrange funds for the same, but they neither built the museum as promised nor spent the amount for the benefit of the members of the Gulbarga Society nor did they fulfil the assurance made to the victims as regards the sale of their properties but expended on themselves by benumbing and comatosing their liberty by asking them to face custodial interrogation or regard being had to the nature of the offences, for which a crime punishable under Sections 420, 406, 468, 120B of the Indian Penal Code (‘IPC’ for short) and Section 72(A) of the Information and Technology Act, 2000 (for brevity ‘the Act’), has been registered should they be extended the benefit of anticipatory bail, as envisaged under Section 438 of the Criminal Procedure Code (CrPC) that has been refused by the Court of Session as well as by the High Court.

2. Regard being had to the aforesaid issue, the question that arises for consideration is whether liberty on the one hand and fair and effective investigation on the other, make out a case for extending the benefit under Section 438 CrPC.

3. Needless to say "Liberty is to the collective body, what health is to every individual body. Without health, no pleasure can be tasted by man; without liberty, no happiness can be enjoyed by society."¹ Thus spoke Bolingbroke.

4. In this context, a passage from Edmund Burke which pertains to societal control is also apt to quote:

"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of

¹ The Works of Lord Bolingbroke with a Life, Vol.2 (Carey and Hart, 1841) 391

intemperate minds cannot be free. Their passions forge their fetters.”²

5. In this context, it is also seemly to reproduce what John Adams, future second President of the United States of America, while speaking about the definition of a Republic, had said:

“The true and only definition is a Government, in which all men, rich and poor, Magistrates and subjects, officers and people, masters and servants, the first citizen and the last, are equally subject to the laws.”

The aforesaid passage clearly makes out that every citizen is subject to the laws of the country. No one is above law.

6. Having stated about the value of liberty, the concept of regulated freedom, the societal restriction, the supremacy of the law, the concept of anticipatory bail and the assertion of the prosecution about the non-cooperation of the appellants in the investigation, and the asseverations made by the appellants, we think it appropriate that the matter should be heard by a larger Bench.

² Alfred Howard, *The Beauties of Burke* (T. Davison, London) 109

7. Accordingly, the Registry is directed to place the matter before the Hon'ble Chief Justice for constitution of appropriate larger Bench.

8. A three-Judge Bench of this Court, on 12.02.2015, had granted interim protection till 13.02.2015, which was extended by the next order passed on 13.02.2015 till 19.02.2015. When this Bench had heard the matter and reserved the judgment on 19.2.2015, it had passed the following order:-

“As an interim measure, it is directed that the appellants shall not be arrested in connection with FIR being C.R. No. 1 of 2014, registered with D.C.P., Crime Branch, Ahmedabad, Gujarat.”

9. As we are referring the matter to a larger Bench, the interim order passed on 19.02.2015 shall remain in force till the larger Bench takes up the matter.

.....J.
[DIPAK MISRA]

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
MARCH 19, 2015.