



GUJARAT HIGH COURT ADVOCATES' ASSOCIATION

1st Floor, Advocate Chamber's Building, High Court Campus, Ahmedabad-60.
Phone : (079) 27663802 E-mail : ghaa1960@gmail.com Web : www.ghaa.in

President

Yatin N. Oza
M. : +91 98250 05256

Vice President

Prithviraj A. Jadeja
M. : +91 98257 80750

Secretary

Hardik D. Brahmbhatt
M. : +91 98241 25353

Joint Secretary

Ami K. Patel
M. : +91 97129 52702

Treasurer

Savan N. Pandya
M. : +91 97230 32555

To,

Date: 02.05.2020

Respected Shri Vikram Nath,
Hon'ble The Chief Justice,
High Court of Gujarat,
Sola, Ahmedabad-380060

Reference: Circular dated 01.05.2020

Subject: Request for immediate withdrawal of the said circular.

Dear Chief Justice,

I hope this letter finds you in the best of health and happiness.

By way of this letter, I request your goodself to be good enough to immediately withdraw the circular under reference. The said circular is going to end up with lots of miseries to several advocates, who are either facing difficulties, grave difficulties or are at the verge of economic ruination.

The High Court is in quarantine since 18th March, 2020. To me, I find no logic or reason to restrict the working only to hear urgent matters and that too after such a rigorous procedure to be followed for getting the matters listed. My request to your Lordship is to start the functioning of the court full-fledged via video

Committee Members

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conferencing and all the matters whether new or pending be taken up for hearing. In so far as pending matters are concerned, the procedure as prescribed in circular dated 30.04.2020 be followed. Registry has also goofed up on many occasions and made the issues completed.

Former Chairman of the Bar Council of Gujarat, Shri Dipen Dave, informed me that he has filed a bail petition wherein he has annexed the order passed by the co-ordinate bench to claim parity. He had annexed the computer copy downloaded from the website of the High Court. The Registry took the objection to provide typed copies. When learned advocate provided the typed copies in ten minutes' time, he got the message from the High Court Registry stating that, 'why is he unnecessarily uploading the orders which are already annexed?'. Mr. Nimish Kapadia messaged me today as follows, "I have filed one CA for directions in pending *suo motu* PIL 42/20 regarding Corona. Office has raised objection that parties do not tally. Can any friend give full details of parties?"

There are more than 50 such instances where my attention has been drawn by different advocates.

The speech that I had prepared for yesterday's commemoration function but had to shorten for the paucity of time, did include the following,

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“I still yearn for the days when Judges used to consider “Procedure as the slave of justice’ a means to an end not the end itself. Justice Ahmedi used to say, justice can never be slave of procedures, procedure is subservient to justice. I say this in context of circulation of matters which now is a herculean task than getting appropriate orders in the matter. In those days, if an advocate found matter to be urgent just with an order sheet and docket form attached to the petition, used to present the matter directly to the court. All that the Hon’ble Judges used to verify was affidavit and vakalatnama. Matters were taken up, orders were passed and thereafter, the matter was numbered. Circulation was not a prerogative of the Registry-it was a procedure and not a hindrance in the pathway to justice. If there was some genuine urgency in a matter, an advocate, no matter his standing, could call the court master and the private secretary, inform them about the urgency, and they would reach the Advocates’ office or home and would give a call to the judge concerned and matter used to be taken up, be it the weekend/holidays/vacation. Sometimes even on phone. The judges used to tell their court masters to believe in the urgency of the matter if the Advocate felt so. In extraordinarily urgent cases, the modalities were completely given a go by.

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In an extraordinary urgent case, Justice D. A. Desai once passed an order at 2:00 am in the morning and told the court master to give the writ to the advocate for direct service and obtain his signature on the next date.

To those who had witnessed and lived such an era, it is difficult to see the situation as it prevailing today.”

If your Lordship permits, I will put on record the entire speech prepared by me.

I would like to draw your kind attention to the convention of the past:-

The hearing of the detention matter was concluded on Wednesday evening. Shri G. N. Desai, the then Government Pleader, was requested to hand over the files next morning for the dictation of the judgment. The Division Bench which heard the matter, consisted of Hon'ble Mr. Justice M. P. Thakkar and Hon'ble Mr. Justice P. D. Desai. On Thursday morning, the notice appeared outside the court room that Hon'ble Mr. Justice M.P. Thakkar will not be available for judicial work, however, the detention matter which was overnight part heard, would be taken up in the chamber and thereafter Hon'ble Mr. Justice P. D. Desai will take up the matters assigned by the Hon'ble the Chief Justice. The following day, i.e. Friday, was a holiday. When the Bench assembled in the chamber of Hon'ble Mr. Justice M. P. Thakkar, every one present was surprised. Hon'ble Mr. Justice M. P.

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Thakkar was literally shivering. He was down with 103°F temperature. When asked that hearing could have been deferred, his words were, “it is a crime to differ the judgment in a matter of detention already heard and for my illness, why should a detenu be in jail for three more days”.

Hon’ble Mr. Justice P. D. Desai always used to term the detention matter as a draconian power.

In 1992 when I had an occasion to brief and assist Mr. G. N. Desai, Sr. Advocate, in a detention matter, I strongly recollect his words “get it pass, over I will come after attending one or two matters”. When I asked him should I get it adjourned for a day or two, he frowned upon me and said, “How can you ask for an adjournment in a detention matter?”. When I was a Government Pleader if in one matter out of 1000, the State was compelled to ask for time, we used to pass sleepless night as to how we will face Hon’ble Mr. Justice D. A. Desai or Hon’ble Mr. Justice S. H. Sheth or Hon’ble Mr. Justice P. D. Desai”. Such was the importance attached to the detention matters.

As a law student, I had accompanied my friend to Shri I. M. Nanavati’s office for a matter under the Excise Act. His office was at a half minute walking distance from the old high court building. When his junior colleague asked him, which court he will attend first at 11 a.m., his answer was “Hon’ble Mr. Justice

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S.H.Sheth". It was a Division Bench consisting of Hon'ble Mr. Justice S.H.Sheth and Hon'ble Mr. Justice G. T. Nanavati. When his junior pointed out that detention matter is at a particular number, while his two matters were likely to be called out before that, he was slightly angry with his junior and his answer was, "the detention matters are to be given utmost priority and when called out if Hon'ble Mr. Justice Sheth finds that I am not present, he will take sky on his head.

Today, the detenues are in jail for more than four months and most insensitivity is exhibited to the detention matters.

In 1989, Chief Justice Gokul Krishan said from the dais that the detention orders are more lightly passed by the State of Gujarat than the one passed by the government of Jammu & Kashmir and government of Punjab and the number of the orders of detention passed by the state of Gujarat are far more higher than government of Punjab and government of Jammu and Kashmir taken together.

Let me make it very clear that *I have not to appear nor I am going to appear in any pending detention matter.*

The only right that the accused gets before the chargesheet is either quashment of the FIR or the bail under section 438 or 439 of the Code of Criminal Procedure, 1973. He has a right to move the bail under section 439 once before the charge sheet is filed and one after the charge sheet is filed. This is one of the most

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valuable right. There are accused who are languishing in jail for want of their bail application being heard though filed long back and in large number of matters notice or rule having been issued and the date fixed for hearing by the Hon'ble Court.

I very strongly recollect what happened in the Supreme Court during the summer break in the year 2010. A request was made by an advocate for circulation of a bail petition against the order of the High Court passed in January, 2010. The Registry refused the circulation on the ground that the order impugned was of January, 2010 and not a recent one. The senior Judge on the Bench was Hon'ble Mr. Justice G. S. Singhvi. He immediately summoned the Registrar (Circulation) to the court room and directed him to list all the bail matters where accused were languishing in jail. The further direction was that such matters should be treated as urgent irrespective of the date of order. What His Lordships said further is very important, "Assuming that the accused had a knowledge that 'A' judge is going to be a vacation judge and who is liberal and lenient, and he decides to wait for four months, he does so at his own peril and at the cost of his own independence, but that will not be a ground for the court to say no to the hearing on the ground that the order is four months old".

I do not find fault with the Registrars of the different department of the Registry, who always extend their helping hand and extend courtesy to the

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advocates, but the problem lies, once we go down in the hierarchy. I have no personal touch with the functioning of the Registry since long, but let me state you

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President	Vinod Kant	Secretary	Joint Secretary	Treasurer
Yatin N. Oza	Prithviraj A. Jadeja	Hardik D. Brahmbhatt	Ami K. Patel	Savan N. Pandya
M. : +91 98250 05255	M. : +91 98257 80759	M. : +91 98241 25852	M. : +91 97129 52702	M. : +91 97230 32555

sir that complaints are being received from the advocates, speaks about their sufferings and miseries for getting the matter circulated.

I earnestly request your goodself that let the High Court function full fledgedly via video conferencing and let all Hon'ble Judges take up the matters as assigned to them as per roster.

Imparting justice is also a sovereign function of the State through judiciary. Shutting down the courts or restricting its functioning only to extraordinary urgent matters does not reflect well to the reputation of the High Court to a man of prudence.

I hope and trust that your Lordship would be kind enough to start the functioning of the court full-fledged or atleast withdraw the above referred circular.

Thanking you,

Yours sincerely,

(Yatin Oza)
President
GHCAA

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