

CLEAR-HEADED APPROACH: THE HINDU EDITORIAL ON THE JUDICIARY, THE POLICE AND THE GRANT OF BAIL

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July 22, 2023 12:10 am | Updated 12:21 am IST

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Courts should adopt a clear-headed and common sense approach while considering the grant of bail, and should eschew the tendency to keep someone in prison merely because the police oppose bail with great vehemence. In granting [regular bail to activist Teesta Setalvad](#), the Supreme Court of India has effectively rebuffed the Gujarat police stand that the purported gravity of the offence she is accused of is enough to deny her bail. As the case depends mainly on documentary evidence, all of it forming part of the charge sheet filed in the case, the Court really saw no need for her to be in judicial custody. Further, Ms. Setalvad had been subjected to custodial interrogation during a seven-day police remand shortly after [her arrest in June 2022](#), and she was not called in for any further questioning ever since she was given interim bail by the Supreme Court in September. In effect, the three-judge Bench headed by Justice B.R. Gavai saw no real need to imprison someone during trial solely because the police strongly argued that she had allegedly fabricated evidence and goaded victims of the 2002 pogrom in Gujarat to level false charges against political leaders in a bid to implicate them in the communal carnage.

The Court posed some pertinent questions to the Gujarat police. The case of forgery and fabrication of evidence was registered shortly after the Supreme Court, while rejecting a riot victim's plea, had observed that those who had sought to malign the State government and its functionaries should be put in the dock. Ms. Setalvad had been arrested within a day, and the Court had questions about what investigation it had conducted within such a short time to justify her arrest. Notably, the apex court Bench was of the view that [the High Court order refusing bail to her](#) contradicted itself, as it had initially observed that it cannot go into the existence of a prima facie case, but had gone on to consider statements of witnesses against her. The ruling is yet another reminder that an order of bail must be the norm after considering whether the accused is likely to flee justice or will be available for trial, and if, once freed, will be in a position to influence witnesses or tamper with evidence. While the gravity of the offence is a factor, it need not be the sole consideration. The trial in this case is set to begin soon in a Sessions Court in Ahmedabad. One hopes it will settle the question whether activists assisting victims ought to have been proceeded against on the charge of trying to implicate innocent political leaders.

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