REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 733 OF 2021
[ARISING OUT OF SLP (CRIMINAL) NO.4729 OF 2021]

BANKA SNEHA SHEELA ..APPELLANT

VERSUS

THE STATE OF TELANGANA & ORS. ..RESPONDENTS

J U D G M E N T

R.F. Nariman, J

1. Leave granted.

2. The present appeal arises out of a judgment dated 31.03.2021, passed by the High Court for the State of Telangana at Hyderabad, by which a Writ Petition filed by the Petitioner challenging a Preventive Detention Order [hereinafter referred to as "Detention Order"] passed against the Petitioner's husband [hereinafter referred to as "the Detenu"] under Section 3(2) of the Telangana Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual

Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 [hereinafter referred to as "Telangana Prevention of Dangerous Activities Act"] , was dismissed.

3. The Detention Order under the provisions of the Telangana Prevention of Dangerous Activities Act is dated 28.09.2020. It refers to five FIRs that have been filed against the Detenu, all the said FIRs being under Sections 420, 406 and 506 of the IPC. The facts contained in the FIRs range from October, 2017 to December, 2019 and are similar. We may set out the facts contained in FIR No.705 of 2019 as a sample of similar FIRs filed against the Detenu as follows [This narration of the FIR is to be found in the Detention Order itself]:

> "On 12.12.2019 at 1200 hours a complaint was received from Sri Kommu Naveen Kumar S/o Veeraswamy, aged about 24 years, Occ: Car Mechanic, R/o H.No. 2-32, Yadaran Village, Shamirpet Mandal stating that he has been running a Garage near main road at Muraharipally village for the past one year. One Banka Ravikanth, aged about 35 years used to come to his garage for two to three times in a month for his car servicing. In the month of March, 2019 the said Ravikanth introduced himself as a High Court advocate and he would invest money in newly upcoming companies and insisted the complainant to invest money for 100% return. He also informed that they are three advocates, of them one is CA (Chartered Accountant) and another is CS (Company Secretary) by name Chandramouli, aged about 65 years. On believing his words, he transferred Rs.50,000/- through Phone-pay to his Indian Bank, Shamirpet branch vide A/c No. 6714073306. Again on 28.05.2019 he

transferred Rs. 1,00,000/- through Phone-pay as second investment and on 20.06.2019 he deposited Rs. 1,00,000/- from his Indian Bank, Gachibowli Branch account to his account besides giving net cash of Rs. 2,00,000/- by hand. While sending Rs. 1 lakh through phone pay in presence of one Prasad, Banka Ravikanth assured the complainant that in the 2nd investment he would give him Rs. 41,000/- per month throughout the year and he will take Rs. 3,000/- towards his commission. On 12.12.2019 when the complainant asked him to return his money, he threatened with dire consequences. The complainant stated that the said Ravikanth has cheated him by saying that he would get more return. On the strength of the complainant, police registered a case and investigation into."

Following upon the narration of the 5 FIRs comes this important paragraph:

"Due to above incidents, the complainants, victims and other young aspirants, who want to invest money in stock/share market and derive benefits became scared and feeling insecure. These incidents have also caused loss of faith and trust among investors in stock trading fearing similar cheating towards them by the people like you. They are hesitated to consult any consultancies or persons fearing similar cheating by the unknown persons in the guise of providing good profits. These prejudicial activities have also caused disturbance in the public."

4. The Detention Order then refers to the 'Modus Operandi' of the Detenu as follows:

"You are a native of Karimnagar district. You completed graduation (B.Com) in 2011 and LLB in 2019 and have been doing trading in stock market. You have introduced yourselves to the victims as a High Court Advocate and you

have a team consisting of one CA (Chartered Accountant) and CS (Company Secretary) and three advocates. Your CS has an expertise and links in Central and State governments. You have knowledgeable persons in share marketing and used to invest money in upcoming companies which ensure return of 100%. You would lure the innocent public in the guise of providing good profit by investing their money in share marketing. You used to contact your known persons and lure them to invest their money in share market to get good profits assuring the profit 100% within a short period. Further you used to give blank cheques and ask commission from the victims to gain their confidence. As per plan, you collected amount from the victims through Phone-pe which is linked to your bank account and net-banking and in-person. When you received money to your bank account, immediately you had transfer the received amount to your wife's bank account. When the victims contact you over phone, you first start avoiding them and then diverting their calls and finally cheating them. Later, you changed your residential address in order to conceal your where-abouts from the victims. You have cheated so many people to the tune of more than Rs. 50.00 lakhs in the guise of providing good profit through investment in share market.

You are involved in Cr.No.34/2020 u/s 406, 420 IPC of Malkajgiri Police Station in the limits of Rachakonda Police Commissionerate which referred by way of your antecedent criminal background the same is not relied upon for your detention."

5. Thereafter, the Detention Order narrates that anticipatory bail/bail has been granted to the Detenu in all the aforesaid FIRs, the last such relief granted being on 10.08.2020. The Detention Order then narrates:

"Having regard to your involvement in series of criminal activities such as cheating in the guise of providing good profit by investing their money in stock market and collected huge amounts to the tune of more than Rs. 50 lakhs from

them in an organized way and in view of the bail petitions moved by you and granted in the aforesaid cases and later releasing on conditional bail, I am satisfied that free movement of such an offender like you is not safe in the interest of the society as there is an imminent possibility of you indulging in similar prejudicial activities with another set of innocent youth and cheat them on the pretext of providing good profit by investing their money in stock market, which are detrimental to public order, unless you were prevented from doing so by an appropriate order of detention.

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Thus you have indulged in the acts of White Collar offences by committing offences such as cheating so many people by collecting more than Rs. 50 lakhs from them through Phone Pay and online banking and sometimes in person in the guise of providing more profit in the limits of Cyberabad Police Commissionerate. Further your acts have been adversely affecting the maintenance of public order and creating feeling of insecurity among young people, thus disturbing peace and tranquillity in the area.

It is imperative to prevent you from acting in any manner prejudicial to the maintenance of public order. I feel that recourse to normal law may not be effective deterrent-in preventing you from indulging in such further activities prejudicial to the maintenance of public order in the area, unless you were detained by invoking the provisions under the "Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986, (Act No. 01 of 1986)".”

6. As a result thereof, the Detenu was preventively detained from the date of the Detention Order itself. A representation dated 31.10.2020

was made by the Petitioner herein to the Commissioner of Police, Cyberabad Commissionerate [Respondent No. 2] which was considered by the Advisory Board, who by its Order 11.11.2020 found that there was sufficient cause to continue the Detention Order. *Vide* the Order of the State of Telangana dated 17.12.2020, the Detention Order was confirmed and the period of detention was directed to be for a period of one year from 05.10.2020.

7. The impugned judgment, after narrating the facts and the arguments made by counsel on behalf of the Petitioner as well as counsel on behalf of the State, then held:

> "9.In the instant case, a perusal of the material placed on record reveals that the detenu was granted bail by the Courts concerned in all the five cases relied upon by the detaining authority for preventively detaining him. Under these circumstances, the contention of the respondents that the illegal activities of the detenu would disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order and there is imminent possibility of the detenu again indulging in similar prejudicial activities, cannot be brushed aside."

The judgment then referred to the decisions of this Court in **Madhu Limaye v. Sub-Divisional Magistrate** (1970) 3 SCC 746, **Commissioner of Police v. C. Sunita** (2004) 7 SCC 467 and **R.Kalavathi v. State of Tamil Nadu** (2006) 6 SCC 14, and then concluded:

> “The modus operandi of the detenu in the alleged offences which were committed in quick succession would certainly disturb the public peace and tranquillity. So it is imperative upon the officers concerned to pass the order of detention, since the acts of the detenu are prejudicial to the maintenance of public order. The illegal activities of the detenu were of such a reach and extent, that they would certainly affect the even tempo of life and were prejudicial to the public order. The detaining authority had sufficient material to record subjective satisfaction that the detention of the detenu was necessary to maintain public order and even tempo of life of the community. The order of detention does not suffer from any illegality. The grounds of detention, as indicated in the impugned order, are found to be relevant and in tune with the provisions of the P.D.Act. Since the detenu got bail in all the five cases relied upon by the detaining authority, there is nothing wrong on the part of the detaining authority in raising an apprehension that there is every possibility of the detenu committing similar offences, which would again certainly affect the public order. The quick succession of commission of alleged offences by the detenu makes it amply clear that there is every possibility of detenu committing similar offences in future, which are prejudicial to the maintenance of public order.”

8. Shri Gaurav Agarwal, learned counsel appearing on behalf of the Petitioner has raised three points before us. First and foremost, he said there is no proximate or live connection between the acts complained of and the date of the Detention Order, as the last act that was complained of, which is discernible from the first 3 FIRs [FIRs dated 12.12.2019, 12.12.2019 and 14.12.2019], was in December 2019 whereas the Detention Order was passed 9 months later on 28.09.2020. He then argued, without conceding, that at best only a

‘law and order’ problem if at all would arise on the facts of these cases and not a ‘public order’ problem, and referred to certain judgments of this court to buttress the same. He also argued that the Detention Order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

9. Shri Ranjit Kumar, learned senior counsel appearing on behalf of the State of Telangana, reiterated the grounds contained in the Detention Order and argued that the Detenu was a habitual fraudster who had therefore created fear amongst the gullible public, and since he was likely to commit similar offences in future, it was important to preventively detain him, as the ordinary law had no deterrent effect on him. Further, there is no doubt that he had infringed ‘public order’ as defined by the Telangana Prevention of Dangerous Activities Act and had disturbed the even tempo of life of persons who were cheated by him and were likely to be cheated by him.

10. Having heard learned counsel for both parties, it is first important to set out the important provisions of the Act as follows:

“**2. Definitions**

In this Act, unless the context otherwise requires,

(a) “acting in any manner prejudicial to the maintenance of public order” means when a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender, Land-Grabber, a Spurious Seed Offender, an Insecticide Offender, a Fertiliser Offender, a Food Adulteration Offender, a Fake Document Offender, a Scheduled Commodities Offender, a Forest Offender, a Gaming Offender, a Sexual Offender, an Explosive Substances Offender, an Arms Offender, a Cyber Crime Offender and a White Collar or Financial Offender is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health;

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(x) “White collar offender” or “Financial Offender” means a person who commits or abets the commission of offences punishable under the Telangana Protection of Depositors of Financial Establishment Act, 1999 (Act 17 of 1999) or under sections 406 to 409 or 417 to 420 or under Chapter XVIII of the Indian Penal Code, 1860.”

“**Section 3. Power to make orders detaining certain persons**

(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender, Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it

is necessary so to do, make an order directing that such person be detained."

"**Section 13. Maximum period of detention**

The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention."

11. While it cannot seriously be disputed that the Detenu may be a "white collar offender" as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a Preventive Detention Order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. Public order is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

12. As is well-known, the expressions 'law and order', 'public order', and 'security of state' are different from one another. In **Ram Manohar Lohia v. State of Bihar** (1966) 1 SCR 709 the question before this Court arose under a Preventive Detention Order made under Rule 30 of the Defence of India Rules, which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. This Court set out the distinction between

a mere law and order disturbance and a public order disturbance as follows:

> "The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public safety and interest, the defence of India and civil defence. The expression public safety and interest between them indicate the range of action for maintaining security peace and tranquillity of India whereas the expressions defence of India and civil defence connote defence of India and its people against aggression from outside and action of persons within the country. These generic terms were used because the Act seeks to provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, Section 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community. Then it mentions by way of illustration in clause (15) of the same section the power of apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable—
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> (*a*) of being of hostile origin; or
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> (*b*) of having acted, acting or being about to act or being likely to act in a manner prejudicial to—
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> (*i*) the defence of India and civil defence;
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> (*ii*) the security of the State;
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> (*iii*) the public safety or interest:
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> (*iv*) the maintenance of public order;
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> (*v*) India's relations with foreign states:
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> (*vi*) the maintenance of peaceful conditions in any part or area of India: or

(*vii*) the efficient conduct of military operations.

It will thus appear that security of the state, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows Rule 30, which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The argument of Dr Lohia that the conditions are to be cumulatively applied is clearly untenable. It is not necessary to analyse Rule 30 which we quoted earlier and which follows the scheme of Section 3(15). The question is whether by taking power to prevent Dr Lohia from acting to the prejudice of "law and order" as against "public order" the District Magistrate went outside his powers.

[page 738-739]

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We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other

> examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1) (*b*) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.
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> It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."
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> [page 745-746]

13. There can be no doubt that for 'public order' to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects 'law and order' but before it can be said to affect 'public order', it must affect the community or the public at large.

14. There can be no doubt that what is alleged in the five FIRs pertain to the realm of 'law and order' in that various acts of cheating are

ascribed to the Detenu which are punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.

15. At this stage, it is important to advert to the counter affidavit dated 17.07.2021 filed by the State of Telangana. Paragraph 18 of the counter affidavit refers to the granting of bail by Courts in all the five FIRs, which is the real reason for the passing of the Detention Order, as follows:

> “18. It is submitted that in the instant case, the decision to detain the detenu herein is based on the perusal of the material on records which revealed that the detenu was granted bail by the Courts concerned in all the five cases relied upon by the detaining authority for preventively detaining him. The Respondent No. 2 herein recorded his satisfaction that the activities of the detenu are prejudicial to the maintenance of public order, and that ordinary law may not be an effective deterrent to prevent the detenu from indulging in further prejudicial activities. Furthermore, the materials relied upon and circumstances show that subjective satisfaction of the detaining authority is not tainted or illegal on any account. Therefore the passing of the detention order is justified considering that the illegal activities of the detenu would disturb the even tempo of life of the community, which makes it prejudicial to the maintenance of the public order and there is imminent possibility of the detenu again indulging in similar prejudicial activities.”

Paragraph 21 of the counter affidavit then states as follows:

> “21. It is submitted that in the acts which disturb public tranquillity or are breaches of the peace should not be given a narrow meaning, but should be given a liberal interpretation and the expression ‘in the interest of public order’ is very wide amplitude as held by this Hon’ble Court in *Madhu Limaye Versus Sub Division Magistrate* reported in *AIR 1971 SC 2486*. Therefore the Respondent No. 2, before passing the said detention order considered the crucial issues as to whether the activities of the detenu were prejudicial to public and as to whether public order could be affected by only such contravention which affects the community or the public at large.”

16. The reference to **Madhu Limaye v. Sub-Divisional Magistrate** (supra) is wholly inapposite. This judgment dealt with the scope of the expression “in the interests of public order” which occurs in Article 19(2) to 19(4) of the Constitution of India. The observations made by this judgment were in the context of a challenge to Section 144 of the

Code of Criminal Procedure. Importantly, this Court referred to the judgment in **Ram Manohar Lohia** (supra) and then opined:

> "**19.** Adopting this test we may say that the State is at the centre and society surrounds it. Disturbances of society go in a broad spectrum from more disturbance of the serenity of life to jeopardy of the State. The acts become graver as we journey from the periphery of the largest circle towards the centre. In this journey we travel first though public tranquillity, then through public order and lastly to the security of the State.
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> **20.** In dealing with the phrase "maintenance of public order" in the context of preventive detention, we confined the expression in the relevant Act to what was included in the second circle and left out that which was in the largest circle. But that consideration need not always apply because small local disturbances of the even tempo of life, may in a sense be said to effect "public order" in a different sense, namely, in the sense of a state of law abidingness vis-a-vis the safety of others. In our judgment the expression "in the interest of public order" in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within ordre publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression "in the interest of public order" is very wide. Whatever may be said of "maintenance of public order" in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive cannot be said in other circumstances. In the former case this Court confined the meaning to graver episodes not involving cases of law and order which are not disturbances of public tranquillity but of ordre publique."

17. To tear these observations out of context would be fraught with great danger when it comes to the liberty of a citizen under Article 21 of the Constitution of India. The reason for not adopting a narrow meaning of 'public order' in that case was because of the expression "in the interests of" which occurs to Article 19(2) to 19(4) and which is pressed into service only when a law is challenged as being unconstitutional for being violative of Article 19 of the Constitution. When a person is preventively detained, it is Article 21 and 22 that are attracted and not Article 19. Further, preventive detention must fall within the four corners of Article 21 read with Article 22 and the statute in question. To therefore argue that a liberal meaning must be given to the expression 'public order' in the context of a preventive detention statute is wholly inapposite and incorrect. On the contrary, considering that preventive detention is a necessary evil only to prevent public disorder, the Court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.

18. Several judgments of this Court have reminded us about the role of the High Courts and this Court in cases of preventive detention. Thus, in **Frances Coralie Mullin v. W.C. Khambra** (1980) 2 SCR 1095, a Division Bench of this Court held:

> "We have no doubt in our minds about the role of the court in cases of preventive detention: it has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court's writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of Article 22 and the Court exacts compliance. Article 22(5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Reports tell a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless insensibility, the routine and the red tape of the bureaucratic machine."

Likewise, in **Vijay Narain Singh v. State of Bihar** (1984) 3 SCC 14, a 3-Judge Bench of this Court (in which A.P. Sen,J. dissented), Venkataramiah,J., speaking for the majority, reminds us:

> "**32.** …It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. <u>It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court</u>."
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> [emphasis supplied]

O. Chinappa Reddy,J., in a short concurring judgment also sets out the constitutional fundamentals qua preventive detention as follows:

“I entirely agree with my brother Venkataramiah, J. both on the question of interpretation of the provisions of the Bihar Control of Crimes Act, 1981 and on the question of the effect of the order of grant of bail in the criminal proceeding arising out of the incident constituting one of the grounds of detention. It is really unnecessary for me to add anything to what has been said by Venkataramiah, J., .but my brother Sen, J. has taken a different view and out of respect to him, I propose to add a few lines. I am unable to agree with my brother Sen, J. on several of the views expressed by him in his dissent. In particular, I do not agree with the view that “those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires” It is too perilous a proposition. Our Constitution does not give a carte blanche to any organ of the State to be the sole arbiter in such matters. Preventive detention is considered so treacherous and such an anathema to civilised thought and democratic polity that safeguards against undue exercise of the power to detain without trial, have been built into the Constitution itself and incorporated as Fundamental Rights. There are two sentinels, one at either end. The Legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are required to examine, when demanded, whether there has been any excessive detention, that is whether the limits set by the Constitution and the Legislature have been transgressed. Preventive detention is not beyond judicial scrutiny. While adequacy or sufficiency may not be a ground of challenge, relevancy and proximity are certainly grounds of challenge. Nor is it for the court to put itself in the position of the detaining authority and to satisfy itself that the untested facts reveal a path of crime. I agree with my brother Sen,, J. when he says, “It has always been the view of this Court that the detention of individuals without trials for any length of time, however short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law.”

19. In **Union of India v. Yumnam Anand** (2007) 10 SCC 190, this Court reiterated some of these principles as follows:

> "**8.** In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See *R.* v. *Halliday* [1917 AC 260 : (1916-17) All ER Rep Ext 1284 : 86 LJ KB 116 : 116 LT 417 (HL)] and *Kubic Darusz* v. *Union of India* [(1990) 1 SCC 568 : 1990 SCC (Cri) 227 : AIR 1990 SC 605] .) But at the same time, a person's greatest of human freedoms i.e. personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however technical, is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See *Ayya* v. *State of U.P.* [(1989) 1 SCC 374 : 1989 SCC (Cri) 153 : AIR 1989 SC 364]) To lose our country by a scrupulous adherence to the written law, said Thomas Jefferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No carte blanche is given to any organ of the State to be the sole arbiter in such matters."

20. In **Rekha v. State of Tamil Nadu**, (2011) 5 SCC 244, a 3-Judge Bench of this Court spoke of the interplay between Articles 21 and 22 as follows:

"**13.** In our opinion, Article 22(3)(*b*) of the Constitution of India which permits preventive detention is only an exception to Article 21 of the Constitution. An exception is an exception, and cannot ordinarily nullify the full force of the main rule, which is the right to liberty in Article 21 of the Constitution. Fundamental rights are meant for protecting the civil liberties of the people, and not to put them in jail for a long period without recourse to a lawyer and without a trial. As observed in *R.* v. *Secy. of State for the Home Deptt., ex p Stafford* [(1998) 1 WLR 503 (CA)] : (WLR p. 518 F-G)

> " … The imposition of what is in effect a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with ordinary concepts of the rule of law."

Article 22, hence, cannot be read in isolation but must be read as an exception to Article 21. An exception can apply only in rare and exceptional cases, and it cannot override the main rule.

14. Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles. Our Founding Fathers realised its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India.

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17. Article 22(1) of the Constitution makes it a fundamental right of a person detained to consult and be defended by a lawyer of his choice. But Article 22(3) specifically excludes the applicability of clause (1) of Article 22 to cases of preventive detention. Therefore, we must confine the power of preventive detention to very narrow limits, otherwise the great right to liberty won by our Founding Fathers, who were also freedom fighters, after long, arduous and historical struggles, will become nugatory."

This Court went on to discuss, in some detail, the conceptual nature of preventive detention law as follows:

"**29.** Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(*b*) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal." [emphasis supplied]

In an important passage, this Court then dealt with certain general observations made by the Constitution Bench in **Haradhan Saha v. The State of West Bengal** (1975) 3 SCC 198 as follows:

"**33.** No doubt it has been held in the Constitution Bench decision in *Haradhan Saha case* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] that even if a person is liable to be tried in a criminal court for commission of a criminal offence, or is actually being so tried, that does not debar the authorities from passing a detention order under a preventive detention law. This observation, to be understood correctly, must, however, be construed in the background of the constitutional scheme in Articles 21 and 22 of the Constitution (which we have already explained). *Article 22(3)(b) is only an exception to Article 21 and it is not itself a*

fundamental right. It is Article 21 which is central to the whole chapter on fundamental rights in our Constitution. The right to liberty means that before sending a person to prison a trial must ordinarily be held giving him an opportunity of placing his defence through his lawyer. It follows that if a person is liable to be tried, or is actually being tried, for a criminal offence, but the ordinary criminal law (the Penal Code or other penal statutes) will not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.

34. Hence, the observation in SCC para 34 in *Haradhan Saha case* [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] cannot be regarded as an unqualified statement that in every case where a person is liable to be tried, or is actually being tried, for a crime in a criminal court a detention order can also be passed under a preventive detention law.

35. It must be remembered that in cases of preventive detention no offence is proved and the justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a "jurisdiction of suspicion" (vide *State of Maharashtra* v. *Bhaurao Punjabrao Gawande* [(2008) 3 SCC 613 : (2008) 2 SCC (Cri) 128] , SCC para 63). The detaining authority passes the order of detention on subjective satisfaction. Since clause (3) of Article 22 specifically excludes the applicability of clauses (1) and (2), the detenu is not entitled to a lawyer or the right to be produced before a Magistrate within 24 hours of arrest. To prevent misuse of this potentially dangerous power the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is, in our opinion, mandatory and vital.

36. It has been held that the history of liberty is the history of procedural safeguards. (See *Kamleshkumar Ishwardas Patel* v. *Union of India* [(1995) 4 SCC 51 : 1995 SCC (Cri) 643] vide para 49.) These procedural safeguards are required to be zealously watched and enforced by the court and their rigour cannot be allowed to be diluted on the basis

of the nature of the alleged activities of the detenu. As observed in *Rattan Singh* v. *State of Punjab* [(1981) 4 SCC 481 : 1981 SCC (Cri) 853] : (SCC p. 483, para 4)

"*4*. … May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them, and if freedom and liberty are to have any meaning in our democratic set up, it is essential that at least those safeguards are not denied to the detenus."

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39. Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. The stringency and concern of judicial vigilance that is needed was aptly described in the following words in *Thomas Pelham Dale case* [(1881) 6 QBD 376 (CA)] : (QBD p. 461)

"Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue.""

[emphasis supplied]

21. Shri Ranjit Kumar, learned senior counsel appearing on behalf of the State of Telangana relied strongly upon **Subramanian v. State of Tamil Nadu** (2012) 4 SCC 699, and in particular upon paragraphs 14 and 15 which read as follows:

"**14.** It is well settled that the court does not interfere with the subjective satisfaction reached by the detaining authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the court but for the detaining authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the detaining authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.

15. The next contention on behalf of the detenu, assailing the detention order on the plea that there is a difference between "law and order" and "public order" cannot also be sustained since this Court in a series of decisions recognised that public order is the even tempo of life of the community taking the country as a whole or even a specified locality. [Vide *Pushpadevi M. Jatia* v. *M.L. Wadhawan* [(1987) 3 SCC 367 : 1987 SCC (Cri) 526] , SCC paras 11 & 14; *Ram Manohar Lohia* v. *State of Bihar* [AIR 1966 SC 740 : 1966 Cri LJ 608 : (1966) 1 SCR 709] ; *Union of India* v. *Arvind Shergill* [(2000) 7 SCC 601 : 2000 SCC (Cri) 1422] , SCC paras 4 & 6; *Sunil Fulchand Shah* v. *Union of India* [(2000) 3 SCC 409 : 2000 SCC (Cri) 659] , SCC para 28 (Constitution Bench); *Commr. of Police* v. *C. Anita* [(2004) 7 SCC 467 : 2004 SCC (Cri) 1944] , SCC paras 5, 7 & 13.]"

The statement made by this Court in paragraphs 14 and 15 were on facts which were completely different from the facts of the present

case as reflected in paragraphs 16 and 17 thereof which read as follows:

> "**16.** We have already extracted the discussion, analysis and the ultimate decision of the detaining authority with reference to the ground case dated 18-7-2011. It is clear that the detenu, armed with "aruval", along with his associates, armed with "katta" came to the place of the complainant. The detenu abused the complainant in filthy language and threatened to murder him. His associates also threatened him. The detenu not only threatened the complainant with weapon like "aruval" but also damaged the properties available in the shop. When the complainant questioned the detenu and his associates, the detenu slapped him on his face. When the complainant raised an alarm for rescue, on the arrival of general public in and around, they were also threatened by the detenu and his associates that they will kill them.
>
> **17.** It is also seen from the grounds of detention that because of the threat by the detenu and his associates by showing weapons, the nearby shopkeepers closed their shops out of fear and auto drivers took their autos from their stand and left the place. According to the detaining authority, the above scene created a panic among the public. In such circumstances, the scene created by the detenu and his associates cannot be termed as only law and order problem but it is public order as assessed by the detaining authority who is supposed to safeguard and protect the interest of public. Accordingly, we reject the contention raised by the learned Senior Counsel for the appellant."

This was obviously a case in which 'public order' was directly affected and not a case in which 'law and order' alone was affected and is thus distinguishable, on facts, from the present case.

22. In **Yumman Ongbi Lembi Leima v. State of Manipur** (2012) 2 SCC 176, this Court specifically adverted to when a preventive detention

order would be bad, as recourse to the ordinary law would be sufficient in the facts of a given case, with particular regard being had to bail having been granted. This Court held:

> "**23.** Having carefully considered the submissions made on behalf of the respective parties, we are inclined to hold that the (*sic* exercise of) extraordinary powers of detaining an individual in contravention of the provisions of Article 22(2) of the Constitution was not warranted in the instant case, where the grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of Yumman Somendro being released on bail in connection with the cases in respect of which he had been arrested, to support the order of detention.
>
> **24.** Article 21 of the Constitution enjoins that:
>
> "**21. *Protection of life and personal liberty***.—No person shall be deprived of his life or personal liberty except according to procedure established by law."
>
> In the instant case, although the power is vested with the authorities concerned, unless the same are invoked and implemented in a justifiable manner, such action of the detaining authority cannot be sustained, inasmuch as, such a detention order is an exception to the provisions of Articles 21 and 22(2) of the Constitution.
>
> **25.** When the courts thought it fit to release the appellant's husband on bail in connection with the cases in respect of which he had been arrested, the mere apprehension that he was likely to be released on bail as a ground of his detention, is not justified.
>
> xxx xxx xxx
>
> **27.** As has been observed in various cases of similar nature by this Court, the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws as also under the laws of preventive detention, which, therefore, are required to be

exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order. An individual incident of an offence under the Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention."

This judgment was followed in **Mungala Yadamma v. State of A.P.** (2012) 2 SCC 386, as follows:

"**7.** Having considered the submissions made on behalf of the respective parties, we are unable to accept the submissions made on behalf of the State in view of the fact that the decision in *Rekha case* [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] , in our view, clearly covers the facts of this case as well. The offences complained of against the appellant are of a nature which can be dealt with under the ordinary law of the land. Taking recourse to the provisions of preventive detention is contrary to the constitutional guarantees enshrined in Articles 19 and 21 of the Constitution and sufficient grounds have to be made out by the detaining authorities to invoke such provisions.

8. In fact, recently, in *Yumman Ongbi Lembi Leima* v. *State of Manipur* [(2012) 2 SCC 176] we had occasion to consider the same issue and the three-Judge Bench had held that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution in Part III thereof. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which, therefore, are required to be exercised with due caution as well as upon a proper appreciation of the facts as to whether such acts are in any way prejudicial to the interest and the security of the State and its citizens, or seek to disturb public law and order, warranting the issuance of such an order.

9. No doubt, the offences alleged to have been committed by the appellant are such as to attract punishment under the Andhra Pradesh Prohibition Act, but that in our view has to

> be done under the said laws and taking recourse to preventive detention laws would not be warranted. Preventive detention involves detaining of a person without trial in order to prevent him/her from committing certain types of offences. But such detention cannot be made a substitute for the ordinary law and absolve the investigating authorities of their normal functions of investigating crimes which the detenu may have committed. After all, preventive detention in most cases is for a year only and cannot be used as an instrument to keep a person in perpetual custody without trial. Accordingly, while following the three-Judge Bench decision in *Rekha case* [(2011) 5 SCC 244 : (2011) 2 SCC (Cri) 596] we allow the appeal and set aside the order passed by the High Court dated 20-7-2011 [The High Court dismissed the same vide *Munagala Yadamma* v. *State of A.P.*, WP (Cri) No. 13313 of 2011, order dated 20-7-2011 (AP)] and also quash the detention order dated 15-2-2011, issued by the Collector and District Magistrate, Ranga Reddy District, Andhra Pradesh."

23. Shri Gaurav Agrawal and Shri Ranjit Kumar also cited the judgments of this Court in **Sama Aruna v. State of Telangana** (2018) 12 SCC 150 and **Collector & District Magistrate v. Sangala Kondamma** (2005) 3 SCC 666 respectively. Since we are not going into other grounds raised by the Petitioner, it is unnecessary to discuss the law laid down in these judgments.

24. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the Detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but

certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground. Consequently, it is unnecessary to go into any of the other grounds argued by the learned counsel on behalf of the Petitioner. The impugned judgment is set aside and the Detenu is ordered to be freed forthwith. Accordingly, the appeal is allowed.

……J.
(R. F. Nariman)

……
J.
(Hrishikesh Roy)

New Delhi,
August 02, 2021.

Supreme Court of India
Khaja Bilal Ahmed vs The State Of Telangana on 18 December, 2019
Author: Hon'Ble Dr. Chandrachud
Bench: Hon'Ble Dr. Chandrachud, Hrishikesh Roy

REP

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1876 of 2019
@SLP (Crl.) No. 5487 of 2019

Khaja Bilal Ahmed …Appellant

Versus

State of Telangana & Ors …Respondents

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 The Division Bench of the High Court for the State of Telangana by its judgment dated 13 June 2019, dismissed a challenge to an order of detention dated 25 October 2018.

2 The appellant was detained under the provisions of sub-section 2 of Section 3 of the Telangana Prevention of Dangerous Activities of Boot-Leggers, Signature Not Verified Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Digitally signed by SANJAY KUMAR Date: 2019.12.19 10:22:16 IST Reason:

Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act 19861. The order of detention was issued on 2 November 2018 by the Commissioner of Police, Rachakonda, Commissionerate and contained the following recitals:

> "WHEREAS, information has been placed before me that the offender Khaja Bilal Ahmed, S/o Khaja Hassan, age 41 yrs. Occ Business, Charminar, Hyderabad is a "Goonda" and has been habitually and continuously engaging himself in unlawful acts and indulging in the acts of goondaism by acting as a leader/member of criminal

gang and committed gruesome and heinous offences like Murder/Attempt to Murder/ Rioting/Criminal trespass and Assault on Public Servants in the Police Station limits of Hyderabad City and Rachakonda Commissionerate and thereby caused harm, panic and terror among the innocent general public of the area and on account of his criminal activities, his presence in the locality is adversely affecting the public order and thus he has acting in a manner prejudicial to maintenance of public order apart from disturbing the peace, tranquility, social harmony in the society." The order then sets out a reference to fourteen cases which were registered against the appellant under various heads of crime within the limits of Hyderabad City. These cases were registered between 2007 and 2016. One of the cases against the appellant under Sections 323 and 341 of the Indian Penal Code 18602 is stated to have been compromised in a Lok Adalat; in four cases, the appellant is stated to have been acquitted; five cases are stated to have been "Telangana Offenders Act 1986" "IPC" transferred to the Special Investigation Team3, Hyderabad City for further investigation and four cases are pending trial. The order of detention states that:

"The above cases are referred as his antecedent, criminal history and conduct. Though, cases were registered, arrested by Police and a Rowdy sheet is being maintained at PS Rain Bazar of Hyderabad City, he could not mend his criminal way of life and continued to indulge in similar offences soon after coming out on bail." The order of detention thereafter proceeds to state that in 2018, the appellant was implicated in Crime no 178 of 2018 under Sections 364, 302, 120B and 506 read with Section 34 of the IPC at PS Abdullapurmet of Rachakonda Commissionerate which is under investigation. The "dangerous activities of the offender and his associates" are stated to have caused panic and a feeling of insecurity in the minds of the general public living within the limits of Hyderabad City and Rachakonda Police Commissionerate, thereby disturbing the peace and tranquillity of the area in a manner prejudicial to the maintenance of public order.

The order of detention was passed by the Commissioner of Police on the basis of the following satisfaction:

"WHEREAS. I, Mahesh M. Bhagwat, IPS, Commissioner of Police, Rachakonda, am satisfied on examination of the material placed before me that the offender Khaja Bilal Ahmed has been repeatedly indulging himself in the manner of goondaism by acting a leader/member of criminal gang and committed gruesome offences such as Murder/Attempt Murders/ Rioting in an organized fashion, creating a feeling of insecurity to their life in the minds of General Public and thus disturbing peace and tranquility in society and acting in a manner prejudicial to maintenance of Public Order. He is a habitual offender and a „Goonda as defined in clause (g) of Section (2) of the Telengana Offenders Act 1986 (Act no. 13 of 2018)" "SIT" 3 On 26 October 2018, the appellant filed an application for bail 4 in Crime no 178 of 2018. The application for bail was allowed by the 14th Additional Metropolitan Magistrate on 26 October 2018 on the ground that the investigating agency had failed to complete

the investigation within the period allowed by the proviso to Section 167(2) of the Code of Criminal Procedure 19735. On 26 October 2018, when bail was granted by the 14th Additional Metropolitan Magistrate in Crime no 178 of 2018, an order of detention dated 25 October 2018 is stated to have been served on the appellant at 7:45 pm while he was still in jail custody.

4 On 2 November 2018, the brother of the appellant filed a Writ Petition 6 challenging the order of detention on the ground that it had not been confirmed within twelve days as contemplated under Section 3(3) of the Telangana Offenders Act 1986. On 2 November 2018, a copy of the order of the State government confirming the order of detention was served on the appellant. On 30 November 2018, a petition7 seeking a writ of habeas corpus was instituted by the brother of the appellant before the High Court challenging the order of detention dated 25 October 2018 and the order of the State government dated 2 November 2018 confirming the detention.

5 On an interlocutory application8 filed in the Writ Petition, the High Court by an order dated 27 February 2019 issued a direction for the release of the Cr.M.P. 1645 of 2018 “CrPC” Writ petition no 41187 of 2018 Writ petition no 43814 of 2018 IA 1 of 2019 appellant from preventive detention on the condition that he would continue to abide by the terms imposed by the 14th Additional Metropolitan Magistrate for the grant of bail on 26 October 2018 in Crime no 178 of 2018. By a judgment dated 13 June 2019, the High Court dismissed the Writ Petition challenging the order of detention, which gave rise to the proceedings before this Court under Article 136 of the Constitution.

6 Before dealing with the rival submissions, it is necessary to set out the position of the fourteen criminal cases against the appellant which have been adverted to in the order of detention. This has been summarised in a tabular chart which was submitted to this Court by Ms Bina Madhavan, learned Counsel appearing on behalf of the State of Telangana. The chart is extracted below :

S NO	CASE NO	UNDER SECTION	CURRENT STATUS
1	305/2012	147,148,188,153 r/w Section 149 of IPC & Section 7 of Criminal Law Amendment Act, 1932	Transferred to SIT. Still under investigation
2	306/2012	147,148,332,188,153(A) R/W 149 of IPC	Transferred to SIT. Still under investigation
3	307/2012	147,148,332,307,188,153(A) r/w 149 of IPC & Section 7 of Criminal Law Amendment Act, 1932	Transferred to SIT. Still under investigation
4	308/2012	147,148,382 r/w 149 of IPC	Transferred to SIT. Still under investigation
5	309/2012	147, 148, 427 r/w 149 of IPC	Transferred to SIT. Still under investigation
6	41/2007	147,148,324,506,153(A),159 of IPC	Pending trial

7	42/2007	147,148,506,427,153(A),159 of IPC	Pending trial
8	44/2007	147,148,324,506,153(A) r/w 149 of IPC	Pending trial
9	43/2007	147,148,448,427,506,153(A) r/w 149 of IPC	Pending trial

CASES IN WHICH ACQUITTED:

S NO	CASE NO	UNDER SECTION	CURRENT STATUS
10	283/2012	149 , 353, 427 r/w 34 of IPC	Acquitted
11	257/2009	147, 353, 427, 332 r/w 149 of IPC & Section 7 of Criminal Law Amendment Act, 1932 & Section 4 of PDPP Act of Reinbazar PS. Hyderabad city	Acquitted
12	47/2011	447,353,427 and 506 of IPC	Acquitted
13	14/2009	147,148,324,307,427, 506 r/w 149 of IPC & Section 27 of Indian Arms Act	Acquitted

CASE WHICH IS COMPROMISED:

S NO	CASE NO	UNDER SECTION	CURRENT STATUS
14	272/2016	341 and 323 of IPC	Compromised Lok Adalat v order 08.09.2017

7 During the course of the proceedings before the High Court, a counter affidavit was filed by the Commissioner of Police stating that:

> "4. ... the records revealed that the since 2009 to 2016 as many as (15) cases were registered against the detenu, for engaging himself in unlawful and dangerous activities. Among them (4) cases were in acquittal. The said cases are referred by way of his criminal background that the same are not relied upon. In the recent past during the year 2018 the detenu was involved in Cr.No 178/2018, u/s Sections 374, 302, 120-B, 506 r/w 34 IPC, Abdullapurmet P.S. of Rachakonda Police Commissionerate., wherein the detenu and his associates kidnapped the deceased to an isolated area of Majeedpur village in the limits of Abdullapumet P.S., and stabbed him to death brutally, thereby created terror and a feeling of insecurity in the minds of general public, apart from disturbing peace and tranquility in the area. Thus the activities of the detenu are prejudicial to maintenance of public order, affecting the public order adversely. The said case has been considered as ground for his detention." (Emphasis supplied) The above statement was reiterated in another part

of the same counter affidavit in the following terms:

> "However, the cases registered against him during the period 2009 to 2016 are not at all considered for passing the detention order. The same are referred by way of his criminal back ground only." (Emphasis supplied) In other words, the order of detention was sought to be justified solely on the basis of Crime no 178 of 2018 registered against the appellant under Sections 364, 302, 120B and 506 read with Section 34 of the IPC. The genesis of the criminal case was spelt out in the counter affidavit filed before the High Court thus:
>
> "A-1 Khaja Bilal Ahmed was active member in AIMIM Party and elected as Corporator for GHMC Ward No: 29 in 2009 Elections and later joined in TPCC and now working as Telangana State Minority Vice President. The marriage of A-1 was solemnized in 2006 with Smt Rafath Sultana and due to some disputes, they got separated in March, 2018 in the presence of their community elders. The deceased Syed Aqeel, who was working with the detenu and residing nearby his house. Later, the deceased Aqeel got married to A-1 s divorced wife Smt Rafath Sultana. As such, the A-1 felt shame in his community and bore grudge on deceased. The Detenu developed grudge against the deceased that the deceased defamed him after marrying his divorced wife. Up on which, the detenu along with his associates (A2 to A8) hatched a plan to eliminate the deceased and in execution of his plan, the detenu and his associates kidnapped the deceased in the early hours on 03-06-208, took him to an isolated area of Majeedpur village of Abdullapurmet Police station limits, where the detenu and his associates stabbed him to death brutally. The case is under investigation for apprehension of absconding accused and collection of further evidence." 8 It was in the above case that the appellant was released on bail on 26 October 2018 on the failure to file a charge-sheet within a period of ninety days.

No charge-sheet has been filed till date.

9 In this backdrop, the following submissions have been urged on behalf of the appellant by Mr Sidharth Luthra, learned Senior Counsel: I The grounds relied upon by the Commissioner of the Police, Rachakonda Commissionerate in the detention order dated 25 October 2018 are stale and have no proximate or live link between the antecedent activities and the detention order as they are of the years 2007 and 2012 except for Crime no 178 of 2018:

(i) The order of detention mentioned fifteen cases, but reliance is placed only on a single case bearing Crime no 178 of 2018 for crimes under Sections 302 and 364;

(ii) Out of the fifteen cases, the detenu has been acquitted in six cases;

> eight cases are pending trial out of which four cases date back to 2007, and four to 2012 and only Crime no 178 of 2018 under Sections 302 and 364 is pending investigation;

(iii) Until date no charge-sheet has been filed in Crime no 178 of 2018 dated 3 June 2018;

(iv) By the admission of the respondents, the order of detention has been passed on one solitary case; and

(v) In support of the submission that the order of detention was invalid, reliance has been placed on the decisions of this Court in Sama Aruna v State of Telangana9, Lakshman Khatik v State of West Bengal10, Rameshwar Shaw v District Magistrate Burdwan11 and Yumman Ongbi Lembi Leima v State of Manipur12. II Non-confirmation of the detention order within three months would result in its automatic revocation.

(i) The appellant was in detention from 25 October 2018 until 27 February 2019, for a period of four months without confirmation by the government under Section 12;

(ii) In response to a Right to Information13 query dated 2 July 2019 lodged by the appellant s brother with the Superintendent, Central Prison, Cherlapalli, Medchal district, it was stated that the prison authorities had not received any confirmation or revocation of the detention order pertaining to the appellant;

(iii) The confirmation order dated 28 December 2018 was placed on the record for the first time during the course of the present proceedings in the additional grounds filed in the Special Leave Petition;

(iv) The confirmation order dated 28 December 2018 found no mention either in the High Court or in the first counter affidavit which was filed before this Court on 18 July 2019;

(2018) 12 SCC 150 (1974) 4 SCC 1 AIR 1964 SC 334 (2012) 2 SCC 176 “RTI”

(v) The confirmation order clearly stated that the Superintendent of Jails, Central Prison “should serve the order on the detenu immediately”; and

(vi) It is a sine qua non for the continuation of the detention order beyond the period of three months that the appropriate government must confirm it within three months. In support of the argument, reliance has been placed on the decisions of this Court in Nirmal Kumar Khandelwal v Union of India14 and Cherukuri Mani v Chief Secretary, Govt of AP15.

III The detention order dated 25 October 2018 categorically states that the appellant will be granted mandatory bail under Section 167 of the CrPC and therefore, has been passed only on the apprehension of bail being granted:

(i) The detention order has been passed apprehending the grant of bail without following the criteria laid down by this Court in Kamarunnissa v Union of India16, in which it was held: “13. In case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason believe on the basis of reliable

material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing." (1978) 2 SCC 508 (2015) 13 SCC 722 (1991) 1 SCC 128 [Also followed in Champion R Sangma v State of Meghalaya (2015) 16 SCC 253.] IV Adequate measures and remedies were available under ordinary law and hence there was no necessity to issue an order of preventive detention;

V The detention order dated 25 October 2018 was confirmed under Section 3(2) after a delay of eight days; and VII The appellant was arrested in Crime no 178 of 2018 and was granted statutory bail under Section 167 CrPC on 26 October 2018. The order of detention was served on the appellant while he was in custody. The appellant was in custody until 27 February 2019 when an interim order of release was passed, which continued to remain in force until the High Court dismissed the petition on 13 June 2019. Aggrieved by the order of the High Court, the appellant moved the Vacation Bench of this Court which adjourned the proceedings on 25 June 2019. The Special Leave Petition was listed on 1 July 2019 when a notice was issued returnable in two weeks. The proceedings were listed on various dates and arguments were heard for final disposal. 10 On the other hand, Ms Bina Madhavan, learned Counsel appearing on behalf of the State of Telangana submitted thus:

> (i) In ordinary circumstances, the courts do not interfere with the subjective satisfaction of the detaining authority. Reliance has been placed upon the decision of this Court in Subramanian v State of T N17;

(2012) 4 SCC 699

(ii) A single offence can legitimately form the subject matter of an order of detention;

(iii) The order of detention dated 25 October 2018 was approved on 2 November 2018 as stipulated under Section 3(3) of the Telangana Offenders Act 1986. Accordingly, there was no delay in confirming the order;

(iv) The order of the Advisory Board was duly passed on 12 December 2018, and the State Government confirmed the detention on 28 December 2018;

(v) The reference to the antecedent criminal cases in the order of detention was only to indicate the background of the appellant who had been implicated in the past in several cases involving rioting of a communal nature; and

(vi) The appellant was implicated in a case involving the brutal murder of a person who had married his former wife and, having regard to the nature of the offence, it was open to the detaining authority to arrive at the satisfaction that there was a real possibility of the appellant indulging in prejudicial activity if he were to be released on bail. 11 The rival submissions fall for consideration. 12 The expression "goonda" is defined in the Telangana Offenders Act 1986 in the following terms:

"(g) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code" Section 3 contains the power to make orders of preventive detention:

"3. (1) The Government may, if satisfied with respect to any boot-legger, dacoit, drug-offender, goonda, immoral traffic offender [Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender] that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the mean time, it has been approved by the Government." Section 11 deals with the procedure before the Advisory Board:

"11. (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the Government or from any person called for the purpose through the Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) The proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board." Section 12 provides for the action to be taken on the receipt of the report of the Advisory Board:

"12. (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in section 13 as they think fit.

(2) In any case, where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith." Section 13 provides for the maximum period of detention:

"13. The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention." 13 The order of detention in the present case contains a reference to fourteen cases which were instituted against the appellant between 2007 and 2016. The chart provided on behalf of the State Government which has been extracted earlier indicates that out of the fourteen cases, five cases which pertain to 2012 were transferred to the SIT for investigation; there being no change in that position. Four cases pertaining to 2007 are pending trial. The appellant has been acquitted in four cases of 2009, 2011, and 2012. The case of 2016 was compromised in a Lok Adalat on 8 September 2017.

14 In Sama Aruna v State of Telangana18, this Court while construing the provisions of the Telangana Offenders Act 1986 held:

"16. Obviously, therefore, the power to detain, under the 1986 Act can be exercised only for preventing a person from engaging in, or pursuing or taking some action which adversely affects or is likely to affect adversely the maintenance of public order; or for preventing him from making preparations for engaging in such activities. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that

only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account. In Golam Hussain v. State of W.B. [Golam Hussain v. State of W.B., (1974) 4 SCC 530 : 1974 SCC (Cri) 566] this Court observed as follows: (SCC p.

535, para 5) "5. No authority, acting rationally, can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. To rule otherwise is to sanction a simulacrum of a statutory (2018) 12 SCC 150 requirement. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. We have to investigate whether the causal connection has been broken in the circumstances of each case." Suffice it to say that in any case, incidents which are said to have taken place nine to fourteen years earlier, cannot form the basis for being satisfied in the present that the detenu is going to engage in, or make preparation for engaging in such activities." (Emphasis supplied) In the facts of that case, the Court held that the order of detention was passed on stale grounds, which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. This Court held thus:

"17. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See G. Reddeiah v. State of A.P. [G. Reddeiah v. State of A.P., (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and P.U. Iqbal v. Union of India [P.U. Iqbal v. Union of India, (1992) 1 SCC 434 :

1992 SCC (Cri) 184]. (Emphasis supplied)

15 In the present case, the order of detention states that the fourteen cases

were referred to demonstrate the "antecedent criminal history and conduct of the appellant". The order of detention records that a "rowdy sheet" is being maintained at

PS Rain Bazar of Hyderabad City and the appellant "could not mend his criminal way of life" and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were "referred by way of his criminal background... (and) are not relied upon". The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 "are not at all considered for passing the detention order" and were "referred by way of his criminal background only". This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention.

The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority.

However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

16 Apart from the above position, Section 12 of the Telangana Offenders Act 1986 provides that the government, upon the report of the Advisory Board stating that there is sufficient cause for the detention of a person, may confirm the order of detention and continue the detention for such period not exceeding the maximum period specified in Section 13 "as they think fit". Consequently, under Section 12, the government has the discretion whether or not to confirm the detention upon receipt of the report of the Advisory Board recording sufficient cause for detention. The relevance of the action of the government upon the report of the Advisory Board has been discussed in a three-judge Bench decision of this Court in Shibapada Mukherjee v State of W B19, where a similarly worded Section 12 of the West Bengal (Prevention of Violent Activities) Act 1970 was

discussed. Justice J M Shelat speaking for the Bench held thus:

> "6. Section 10 of the present Act requires the State Government to refer the case to the Board within 30 days (1974) 3 SCC 50 from the date of detention, and Section 11 requires the Board to submit its report within ten weeks from such date. The reason for prescribing these periods is obvious, that is to enable the State Government to decide, in the event of the Board reporting that there is sufficient cause for detention to confirm the detention order and to continue the detention thereunder "for such period as it thinks fit". [Section 12(1).] The significant words in Section 12 are the words "confirm" the detention order and "continue" the detention thereunder, "for such period as" the State Government thinks fit. The order passed or the decision made under Section 12(1) by the State Government, thus, falls into two parts: (a) confirming the detention order upon the report of the Board as to the sufficiency of the cause for detention, and (b) deciding to continue the detention under that order... If on receipt of the Advisory Board's report, Government wants to continue the detention for a further period, it has got to make an order or a decision to confirm that order and continue the detention, for without such an order or decision the detention would not validly subsist beyond the period of three months. Though, therefore, Section 12 does not in express terms lay down that the decision to confirm the detention order and to continue thereunder the detention is to be made before the expiry of three months, such a time-limit is implicit in the section. The reason is plain. As aforesaid, Government cannot keep a person under detention for a day longer than three months if the report of the Board does not justify the detention. The continuation of detention beyond three months can only be made upon the Government obtaining a report showing sufficiency of cause before the expiry of the period of three months...

If there is no such decision to confirm the order and to continue the detention thereunder, detention has to come to an end on the expiry of three months from the date of detention. Such an order or decision has therefore, to be made before the period of three months, for without such an order the detention would otherwise cease to be valid." (Emphasis supplied) 17 In the present case, the detenu was in detention between 25 October 2018 until 27 February 2019. The brother of the detenu submitted an RTI application to the Superintendent, Central Prison Cherlapalli. The query and the response provided are in the following terms:

S No	Particulars	Information Pro
1	While my brother was in detention under the detention order dated 25-10-2018 till 28-02-2019, did the Prison authorities received any confirmation/ revocation of the detention order by the Government u/s 12 of the "1986 Act" pursuant to appearance before the Advisory Board on 03-11-2018?	This institution has not Confirmation or Revocatio pertaining to the Detenu No.723, Khaja Bilal Ahmed Khaja Hassan, from the da production of said detenu before the Advisory Preventive Detention to t release of the said deten institution, viz., from 0

		28-02-2019.
2	If any such confirmation/ revocation was received in the case of Khaja Bilal Ahmed, Detenu no 723, was a copy of the same served to him?	Since no such Confirmatio Revocation order pertaini Detenu Prisoner no 723, K Ahmed, S/o Khaja Hassan, received in this institut the order was not served detenu prisoner.

18 The order of confirmation purported to have been passed by the State Government was annexed for the first time on 30 September 2019 to the additional counter affidavit filed in the proceedings before this Court by the Commissioner of Police, Rachakonda. The said order contains the following endorsement:

> "The Superintendent of Jails, Central Prison, Cheriapally, Medhal-Malajgiri Dist. (he should serve the Order on the detenu immediately under proper dated acknowledgment and arrange to read over and explain the contents of the same in the language known to the detenu and report compliance to the Government forthwith)." (Emphasis supplied) 19 The order of confirmation found no mention either during the proceedings before the High Court or in the first counter affidavit which was filed before this Court on 18 July 2019. The record indicates that no order of confirmation was served on the detenu between 28 December 2018 (the date on which it was purportedly passed) till the detenu continued to be in detention until 27 February 2019. The manner in which the order has surfaced, for the first time, in an additional counter affidavit filed before this Court casts serious doubt on whether such an order was at all in existence on the relevant date.

20 The detention order dated 25 October 2018 has to be set aside on the following grounds: (i) reference to stale and irrelevant grounds in the detention order by the detaining authority; and (ii) the manner in which the order of confirmation dated 28 December 2018 was presented before this Court, casts doubt on the existence of the order of confirmation in the first place. As regards the registration of Crime no 178 of 2018, the appellant was released on bail consequent upon the failure of the investigating authority to file a charge-sheet within ninety days. A charge-sheet, as has been pointed earlier, has not been filed till date. There was no reasonable basis on which the detaining authority could have come to a conclusion that:

> (i) On being released on bail, the appellant would in all probability indulge in prejudicial activity; and
>
> (ii) It was necessary to detain him, to prevent him from engaging in prejudicial activity. (See in this context Kamarunnissa v Union of India20).

(1991) 1 SCC 128 21 We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 13 June 2019. The order of detention accordingly stands quashed.

22 Pending application(s), if any, shall stands disposed of.

.....J [Dr Dhananjaya Y Chandrachud]
.....J [Hrishikesh Roy] New Delhi;

December 18, 2019.

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 561 of 2022
(Arising out of SLP(Crl) No 1788 of 2022)

Mallada K Sri Ram **.... Appellant(s)**

Versus

The State of Telangana & Ors **....Respondent(s)**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Leave granted.

2 This appeal arises from a judgment dated 25 January 2022 of a Division Bench of the High Court for the State of Telangana dismissing the writ petition seeking a writ of *habeas corpus*.

3 The brother[1] of the appellant worked as an employee with an entity by the name of M/s Ixora Corporate Services[2], Banjara Hills, Hyderabad. On 13 October 2020, a complaint was lodged on behalf of the Company with the SHO, Banjara Hills, alleging that K Mahendar, another employee at the Company, had opened a salary account with the Federal Bank without authorization and in conspiracy with the detenu collected an amount of Rs 85 lakhs from 450 job aspirants. It

1 “detenu”
2 “Company”

was alleged that the co-accused who was in charge of the HR Department at the Company had, in collusion with the detenu, hatched a plan to collect money from individuals by misrepresenting that they would be given a job at the Company and collected money from aspirants for opening a bank account and supplying uniforms.

4 The first FIR, FIR No 675 of 2020, was registered on 15 October 2020 at Police Station Banjara Hills against K Mahendar (A-1) and the detenu (A-2) for offences punishable under Sections 408, 420, 506 and 120B of the Indian Penal Code 1860[3]. On 17 December 2020, another FIR, FIR No 343 of 2020, was registered at Police Station Chatrinaka against the detenu for offences punishable under Sections 408, 420 and 120B IPC based on similar allegations at the behest of another informant. The detenu was arrested, in the first case, on 17 December 2020 and, in the second case, on the execution of a PT warrant on 4 January 2021. In the first case, the detenu was released on bail on 8 January 2021 in terms of an order dated 31 December 2020, subject to the condition that he shall appear before the SHO, Police Station Banjara Hills on Mondays between 10.30 am and 5 pm till the filing of the charge-sheet. In the second case, the detenu was released on bail by an order dated 11 January 2021, subject to the condition that he shall appear before the SHO, Police Station Chatrinaka on Sundays between 2 pm and 5 pm for a period of three months. The Court has been apprised of the fact that the charge-sheet has been submitted in the first case.

5 An order of detention was passed against the detenu on 19 May 2021 under the provisions of Section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders,

3 “IPC”

Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act 1986[4]. The order of detention was challenged before the High Court in a petition under Article 226 of the Constitution. The Division Bench of the High Court dismissed the petition by its impugned judgment and order dated 25 January 2022.

6 Mr A Sirajudeen, senior counsel appearing on behalf of the appellant, submits that there is *ex facie,* non-application of mind by the detaining authority while passing the order of detention. Senior counsel submitted that this would be evident from the fact that the detenu had been granted bail almost five months prior to the order of detention. The grant of bail was subject to the condition that the detenu would report to the SHO of the police station concerned, in the first case, until the charge-sheet was filed and, in the second case, for a period of three months on stipulated days of the week. In the first case, the charge-sheet was submitted prior to the date of the order of detention on 19 May 2021. On the above premises, it has been submitted that the very basis of the order of detention stands vitiated since it will be apparent from the condition which was imposed by the Court while granting bail that the detenu was required to attend the police station concerned throughout the stipulated period and even that period came to an end by the time the order of detention was passed. Moreover, whereas the order of detention has proceeded on the basis that the acts of the detenu had created a situation leading to a breach of public order in the case, on the other hand, it is evident from the counter affidavit which has been filed by the Commissioner before the High Court that there was only an apprehension that there would be a likelihood of a breach of public order in the future. It was further submitted that it is evident from the recording of facts that the order of

4 “Telangana Act of 1986”

detention was passed nearly seven and five months after both the criminal cases were instituted. The detention was, it is urged, based on stale material. It has been argued that the ordinary course of criminal law would be sufficient to deal with the alleged violation and on the above facts, the detention of the detenu is based on no cogent material whatsoever.

7 Mr Mohith Rao, counsel appearing on behalf of the respondents, has submitted that the nature of the acts which are attributed to the detenu are a part of a series of organized activities involving white collar crime where job aspirants were allured into parting with their money on the promise that they would get employment in the future. Hence, it has been urged that the High Court has rightly held that the order of detention should not be interfered with.

8 At the outset, it is necessary to set out the relevant provisions of the Telangana Act of 1986:

> "**2. Definitions.—**In this Act, unless the context otherwise requires,—
> (a) "**acting in any manner prejudicial to the maintenance of public order**" means when a bootlegger, a dacoit, a drug-offender, a goonda, an immoral traffic offender, Land-Grabber, a Spurious Seed Offender, an Insecticide Offender, a Fertiliser Offender, a Food Adulteration Offender, a Fake Document Offender, a Scheduled Commodities Offender, a Forest Offender, a Gaming Offender, a Sexual Offender, an Explosive Substances Offender, an Arms Offender, a Cyber Crime Offender and a White Collar or Financial Offender is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:
> Explanation.—For the purpose of this clause public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health;
> ***
> (x) "**White collar offender**" or "**Financial Offender**" means a person who commits or abets the commission of offences

punishable under the Telangana Protection of Depositors of Financial Establishment Act, 1999 (Act 17 of 1999) or under Sections 406 to 409 or 417 to 420 or under Chapter XVIII of the Indian Penal Code, 1860.

3. Power to make orders detaining certain persons.—(1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender, Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

***

13. Maximum period of detention.—The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under Section 12, shall be twelve months from the date of detention."

9 The order of detention dated 19 May 2021 notes that that the detenu is a 'white-collar offender' under Section 2(x) of the Telangana Act of 1986 whose offence of cheating gullible job aspirants has been causing "large scale fear and panic among the gullible unemployed job aspirants/youth and thus he has been acting in a manner prejudicial to the maintenance of public order apart from disturbing the peace, tranquillity and social harmony in the society". These alleged

offences were noted as the grounds for his detention, in addition to the apprehension that "he may violate the bail conditions and there is an imminent possibility of his committing similar offences, which would be detrimental to public order, unless he is prevented from doing so by an appropriate order of detention".

10 The detenu was released on bail on 8 January 2021 by the Additional Chief Metropolitan Magistrate, Hyderabad subject to the condition that he would have to report to the SHO of the Police Station concerned on a stipulated day every week till the charge sheet was filed. The order granting bail to the detenu in the second case provided that the detenu was subject to the condition of appearing once every week on Sunday before the Police Station concerned for a period of three months with effect from 11 January 2021. As a consequence, the conditions attached to the orders granting bail stood worked out in the month of April 2021. The order of detention dated 19 May 2021 has failed to advert to these material aspects and suffers from a non-application of mind. The basis on which the preventive detention of the detenu has been invoked is that the detenu has cheated aspirants for jobs on the basis of fake documents and that, as a consequence, 450 aspirants were duped, from whom an amount of Rs 85 lakhs had been collected. The order of detention records that the detenu had moved bail applications in two cases in which he was in judicial custody and that the Magistrate had granted him conditional bail. It was apprehended that he may violate the bail conditions while committing similar offences. It is pertinent to note that no application for cancellation of bail was moved by the investigating authorities for violation of the bail conditions.

11 At this stage, it would also be material to note that the first case was registered on 15 October 2020, while the second case was registered on 17 December 2020. Bail was granted on 8 January 2021. The order of detention was passed on

19 May 2021 and was executed on 26 June 2021. The order of detention was passed nearly seven months after the registration of the first FIR and about five months after the registration of the second FIR. The order of detention is evidently based on stale material and demonstrates non-application of mind on the part of the detaining authority to the fact that the conditions which were imposed on the detenu, while granting bail, were duly fulfilled and there was no incidence of a further violation. In the counter affidavit which was filed before the High Court, the detaining authority expressed only an apprehension that the acts on the basis of which the FIRs were registered were likely to be repeated in the future, thereby giving rise to an apprehension of a breach of public order. The High Court has failed to probe the existence of a live and proximate link between the past cases and the need to detain the detenu after seven months of registration of the first FIR and nearly five months of securing bail.

12 The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in **Ram Manohar Lohia** v. **State of Bihar**[5]. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

> "51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. **Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two**

5 AIR 1966 SC 740

> **drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action** under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.
>
> 52. **It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.** By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."
>
> (**emphasis supplied**)

13 In **Banka Sneha Sheela** v. **State of Telangana**[6], a two-judge Bench of this Court examined a similar factual situation of an alleged offence of cheating gullible persons as a ground for preventive detention under the Telangana Act of 1986. The Court held that while such an apprehension may be a ground for considering the cancellation of bail to an accused, it cannot meet the standards prescribed for preventive detention unless there is a demonstrable threat to the maintenance of public order. The Court held:

> "9. …learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is

6 (2021) 9 SCC 415

no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a "law and order" problem if at all would arise on the facts of these cases and not a "public order" problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

12. While it cannot seriously be disputed that the detenu may be a "white collar offender" as defined under Section 2(*x*) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. "Public order" is defined in the Explanation to Section 2(*a*) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of "law and order" in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(*a*) of the Telangana Prevention of Dangerous Activities Act is make-believe and totally absent in the facts of the present case.

32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground…."

14 In **Sama Aruna** v. **State of Telangana**[7], a two-judge Bench of this Court examined a case where stale materials were relied upon by the detaining authority under the Telangana Act of 1986. The order of detention pertained to incidents which had occurred between nine and fourteen years earlier in relation to offences involving a criminal conspiracy, cheating, kidnapping and extortion. This Court held that a preventive detention order that is passed without examining a live and proximate link between the event and the detention is tantamount to punishment without trial. The Court held:

> "17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See *G. Reddeiah* v. *State of A.P.*[*G. Reddeiah* v. *State of A.P.*, (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and *P.U. Iqbal*v. *Union of India* [*P.U. Iqbal* v. *Union of India*, (1992) 1 SCC 434 : 1992 SCC (Cri) 184]."

15 A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order". In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since

7 (2018) 12 SCC 150

the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.

16 We also note that after notice was issued by this Court, the respondents have been served. No counter affidavit has been filed. We have declined to allow any further adjournment for filing a counter affidavit since a detailed and comprehensive counter affidavit which was filed before the High Court is already on the record and the present proceedings have been argued on the basis of the material as it stood before the High Court. The liberty of the citizen cannot be left to the lethargy of and the delays on the part of the state. Further, in the counter affidavit filed before the High Court, the respondents have argued that the detenu must move the Advisory Board and the writ petition has been filed in a premature fashion. However, in **Arnab Manoranjan Goswami** v. **State of Maharashtra**[8], a two-judge Bench of this Court has held that while the ordinary procedural hierarchy among courts must be respected, the High Court's writ jurisdiction under Article 226 extends to protecting the personal liberty of

8 (2021) 2 SCC 427

persons who have demonstrated that the instrumentality of the State is being weaponised for using the force of criminal law:

> "68. Mr Kapil Sibal, Mr Amit Desai and Mr Chander Uday Singh are undoubtedly right in submitting that the procedural hierarchy of courts in matters concerning the grant of bail needs to be respected. However, there was a failure of the High Court to discharge its adjudicatory function at two levels—first in declining to evaluate prima facie at the interim stage in a petition for quashing the FIR as to whether an arguable case has been made out, and secondly, in declining interim bail, as a consequence of its failure to render a prima facie opinion on the first. The High Court did have the power to protect the citizen by an interim order in a petition invoking Article 226. Where the High Court has failed to do so, this Court would be abdicating its role and functions as a constitutional court if it refuses to interfere, despite the parameters for such interference being met. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponised for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions."

17 It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for *inter alia* incorrectly applying the standard for maintenance of public order[9] and relying on stale materials while passing the orders of detention[10]. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards.

9 **V Shantha** v. **State of Telangana**, (2017) 14 SCC 577; **Banka Sneha Sheela** v. **State of Telangana**, (2021) 9 SCC 415;
10 **Sama Aruna** v. **State of Telangana**, (2018) 12 SCC 150; **Khaja Bilal Ahmed** v. **State of Telangana**, (2020) 13 SCC 632

18 We accordingly allow the appeal and set aside the impugned judgment of the High Court dated 25 January 2022. The order of detention which has been passed against the detenu on 19 May 2021 shall accordingly stand quashed and set aside.

19 Pending application(s), if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

New Delhi;
April 04, 2022
-S-

ITEM NO.25 COURT NO.4 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).1788/2022

(Arising out of impugned final judgment and order dated 25-01-2022 in WP No. 17120/2021 passed by the High Court for the State of Telangana at Hyderabad)

MALLADA K. SRI RAM Petitioner(s)

VERSUS

THE STATE OF TELANGANA & ORS. Respondent(s)

(FOR ADMISSION and I.R.)

Date : 04-04-2022 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) **Mr. A. Sirajudeen, Sr. Adv.**
Mr. A.V.S. Raju, Adv.
Mr. Ch. Leela Sarveswar, Adv.
Mr. P. Prabhakar, Adv.
Mr. R. Ravi, Adv.
Mr. Somanatha Padhan, AOR

For Respondent(s) **Mr. P. Mohith Rao, Adv.**
Mr. S. Udaya Kumar Sagar, AOR

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

2 In terms of the signed reportable judgment, the appeal is allowed. The order of detention which has been passed against the detenu on 19 May 2021 shall accordingly stand quashed and set aside.

3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I) **(SAROJ KUMARI GAUR)**
AR-CUM-PS **COURT MASTER**
(Signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1708 OF 2022
(Arising out of S.L.P. (Criminal) No. 6683 of 2022)

Sushanta Kumar Banik **...Appellant(s)**

Versus

State of Tripura & Ors. **...Respondent(s)**

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal is at the instance of a detenu detained under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short, 'PIT NDPS Act') and is directed against the judgment and order passed by the High Court of Tripura at Agartala dated 01.06.2022 in Writ Petition (Civil) No. 6 of 2021 by which the High Court rejected the writ application filed by the appellant herein questioning the legality and validity of the detention order passed by the Government of

Tripura dated 12.11.2021 and thereby affirming the order of detention.

3. It all started with a proposal dated 28th of June, 2021 submitted by the Superintendent of Police, West Tripura District, Sub-Divisional Police Officer, Amtali, West Tripura to the Superintendent of Police (C/S), West Tripura, Agartala with a request to move the appropriate authority for passing an appropriate order of detention under the provisions of the PIT NDPS Act.

4. The proposal reads thus:-

"GOVERNMENT OF TRIPURA
OFFICE OF THE SUB DIVISIONAL POLICE OFFICER
WEST TRIPURA, AGARTALA

No. 1445/SDPO(AMT)/21
To Dated, 28th June, 2021

The Superintendent of Police (C/S),
West Tripura, Agartala.

Subject: Proposal for Preventive Detention order of accused Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS Amtali, West Tripura U/-3 of PIT NDPS Act, 1988.

Sir,

With reference to the subject cited above, it is to inform that I am submitting a proposal for issuance of preventive detention order against the accused Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura U/-3 of PIT NDPS Act, 1988.

Ongoing through the proposal and the relevant records collected from various sources, the following grounds have been found for detention of Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura U/-3 of PIT NDPS Act, 1988.

1. Sri Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura was charge sheeted in Amtali PS Case No. 2019/AMT/208 dated 05/11/2019 U/S 22(b)/22(C)/29 of NDPS Act, 1985 which was registered following seizure of 92 gm brown sugar (Heroin) & 7600 nos yaba tablets. Investigation of the case has revealed that he is involved in running of illegal business of narcotic drugs throughout the State and outside the State. The subject was arrested on 05/11/2019 and forwarded to the Ld. Court. He has already been charge sheeted in this case vide Amtali PS C/S No. 11/20 dated 09/02/2020 (Copy of FIR, seizure list, inventory, arrest memo, SFSL report, statement of witnesses are enclosed).

2. Sri Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura again got involved in East Agartala PS Case No. 2021 EAG 052 dated 25/04/2021 U/S-21(B)/29 of NDPS Act wherein on 25/04/2021 the said Susanta Kumar Banik S/o Lt. Santi Ch. Banik was again caught red handed while dealing with NDPS substance near Badharghat Railway Station. One pouch filled with suspected heroin was recovered from his possession along with cash Rs.20,400/- & a android mobile. It has made very much clear that the said Sushanta Kumar Banik is a habitual drug dealer and sells drug to youths hence running the lives of young fellows as well as the entire society as a whole. The investigation of the above referred case is under progress and the said Susanta Kumar Banik is learned to be in Judicial Custody.

In view of the above it can be stated that Sri Susanta Kumar Banik is a kingpin in illegal trafficking of narcotic drugs inside the state as well as outside the

state. He did not stop his illegal activities of narcotics drugs and psychotropic substances even after his arrest in previous case vide Amtali PS Case No. 208/19 and East Agartala PS Case No. 52/2021. It shows his determination is to continue his illegal NDPS business. It is further mentioned that illicit trafficking in narcotic drugs and psychotropic substances caused a serious threat to the health and welfare of the people and to protect the society from this menace it is required to take stern action against the subject.

The appropriate authority may please be moved to issue detention order against Susanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Railway Station, PS-Amtali, West Tripura U/s-3 of PIT NDPS Act, 1988 to prevent him from engaging in illicit trafficking of narcotic drugs and psychotropic substances further.

Yours sincerely,
Sd/- 28/6/21
(Anirban Das)
Superintendent of Police,
West Tripura District,
Sub-Divisional Police Officer
Amtali, West Tripura."

Enclo: List of relied documents.

5. The Secretary (Home Department), Government of Tripura acting on the proposal dated 14.07.2021 forwarded by the Director General of Police proceeded to pass the detention order dated 12.11.2021 which reads thus:

"No. F. 15(9)- PD/2021(III)
GOVERNMENT OF TRIPURA
HOME DEPARTMENT

12th November, 2021

O R D E R

Whereas, the Director General of Police has sent a proposal for detention of Shri Sushanta Kumar Banik, S/o. Lt. Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway

Station, PS-Amtali, West Tripura under PITNPS Act, 1988 along with records under Section 3(1) of the Prevention of Illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

AND

Whereas, on perusal of records as submitted by the Director General of Police, Tripura, it appears that Shri Sushanta Kumar Banik, S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura under PITNPS Act. 1988 was involved in the following cases :-

(i) Amtali PS Case No. 2019/AMT/208 dated 05.11.2019 22(b)/22(C)/29 of NDPS Act, 1985.

(ii) East Agartala PS Case No. 2021 EAG 052 dated 25.04.2021 U/S 21(B)/29 of NDPS Act.

AND

Whereas, he has association with the smugglers of NDPS articles and illicit drug traffickers in connection with Amtali PS Case No. 2019/AMT/208 dated 05/11/2019 U/S 22(b)/22(C)/29 of NDPS Act, 1985 and East Agartala PS Case No. 2021 EAG 052 dated 25/04/2021 U/S - 21(B)/29 of NDPS Act.

AND

Whereas, the person is still active in illicit trafficking of NDPS articles revealed from field information but could not be arrested red-handed again and issue of detention order under PITNDPS will also help Police in initiating financial investigation laid down under Chapter-V(A) of NDPS Act.

AND

Whereas, Shri Sushanta Kumar Banik, S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura was charge sheeted in Amtali PS Case No. 2019/AMT/208 dated 05.11.2019 U/S 22(b)/22(C)/29 of NDPS Act, 1985 which was registered following seizure of 92 gm brown sugar (Heroin) and 7600 nos yaba tablets. Investigation of the case has revealed that he is involved in running in illegal

business of narcotics drugs throughout the State and outside the State.

AND

Whereas, he is a kingpin in illegal trafficking of narcotic drugs inside the State as well as outside the State. He did not stop his illegal activities of narcotics drugs and psychotropic substances even after his arrest in previous case vide Amtali PS Case No. 208/19 and East Agartala PS Case No. 52/2021. It shows his determination is to continue his illegal NDPS business. Illicit trafficking in narcotic drugs and psychotropic substances caused a serious threat to the health and welfare of the people and to protect the society from this menace it is required to take stern action against the person.

AND

Whereas, Director General of Police, Tripura has proposed to prevent Shri Sushanta Kumar Banik, S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura from continuing his harmful and prejudicial activity by engaging in illicit traffic of narcotic drugs and psychotropic substances in the interest of society.

AND

Now, therefore, the undersigned, being the specially empowered officer of the State Government in exercise of powers conferred by sub-section (1) of section (3) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and careful examination of the proposal of the Director General of Police, Tripura and other supporting documents, found sufficient grounds for detention of Shri Sushanta Kumar Banik and being satisfied that with a view to preventing him from engaging in illicit traffic in NDPS, it is necessary to detain him and accordingly it is directed for detention of Shri Sushanta Kumar Banik S/o. Late Shanti Ch. Banik of Siddhiashram, Badharghat. Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura.

It is mentioned that the accused Shri Sushanta Kumar Banik S/o. Late Shanti Ch. Banik of

Siddhiashram, Badharghat, Kalimata Sangha, near Agartala Railway Station, PS-Amtali, West Tripura may submit his representation to the Central/State Government against this order of detention. Such representation may be submitted to the undersigned for onward transmission to the Central/State Government. The accused is to be informed that he will get all reasonable opportunity for making representation against this order to the Central/State Government, he may therefore state to the undersigned what opportunity he needed for this purpose. The accused is to be appraised of his right to make representation before the undersigned against this detention order. The accused is to be informed that he also has a right to be heard before the Advisory Board.

The concerned Superintendent of Central Jail/District Jail/Sub-Jail is requested to depute a responsible officer at the time of effecting detention order to the addressee who will explain in details the contents of this order along with grounds of detention. Even assistance of another Government official or any other person may be taken to brief him about the order etc. in the language which the said accused person understands in presence of two witness on receipt signature or thumb impression in token from the accused.

The concerned Superintendent of Central Jail/District Jail/Sub-Jail is directed to extend all assistance to the accused in making representation to the concerned authority. The assistance provided by the Superintendent of Central Jail/District Jail/Sub-Jail may include stationary and any other items as desired by the accused. The Superintendent of Central Jail/District Jail/Sub-Jail will also provide a literate person who shall assist the accused, if he is not literate, in drafting the representation to the Central/State Government.

Sd/- 12.11.2021
(A. Roy)
Secretary to the
Government of Tripura”

6. Thus, from the aforesaid, it appears that the order of preventive detention came to be passed essentially on the ground that in the past two First Information Reports (FIR) were registered against the appellant herein for the offences punishable under Sections 22(b)/22(C)/29 and 21(B) resply of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act, 1985') and is a habitual offender. The first FIR is dated 05.11.2019 and the second FIR is dated 25.04.2021. At the end of the investigation of the FIR dated 05.11.2019, the charge sheet came to be filed and the trial is pending as on date. The investigation so far as the FIR dated 25.04.2021 is concerned, the same is shown to have been pending on the date of the proposal. However, what is important to note is that in both the aforesaid cases registered under the NDPS Act, 1985, the appellant herein was ordered to be released on bail by the Special Court, Tripura.

7. The appellant questioned the legality and validity of the detention order by filing the Writ Petition (Civil) No. 6 of 2021 in the High Court of Tripura at Agartala. The High Court vide the impugned judgment and order dated 01.06.2022 rejected the writ application thereby affirming the order of preventive detention.

8. In such circumstances referred to above, the appellant (detenu) is before this Court with the present appeal.

ANALYSIS:

9. We have heard Ms. Madhumita Bhattacharjee, the learned counsel appearing for the appellant detenu and Mr. Nachiketa Joshi, the learned counsel appearing for the State of Tripura.

10. Manifold contentions have been raised by the learned counsel appearing on both the side.

11. We are persuaded to allow this appeal on the following two grounds:

(i) Delay in passing the order of detention from the date of proposal thereby snapping the "live and proximate link" between the prejudicial activities and the purpose of detention & failure on the part of the detaining authority in explaining such delay in any manner.

(ii) The detaining authority remained oblivious of the fact that in both the criminal cases relied upon by the detaining authority for the purpose of passing the order of detention, the appellant detenu was ordered to be released on bail by the special court. The detaining authority remained oblivious as this material and vital

fact of the appellant detenu being released on bail in both the cases was suppressed or rather not brought to the notice of the detaining authority by the sponsoring authority at the time of forwarding the proposal to pass the appropriate order of preventive detention.

DELAY IN PASSING THE ORDER OF DETENTION

12. We may recapitulate the necessary facts which have a bearing so far as the issue of delay is concerned. The proposal to take steps to preventively detain the appellant at the end of the Superintendent of Police addressed to the Superintendent of Police (C/S) West Tripura, Agartala is dated 28th of June 2021. The proposal in turn forwarded by the Assistant Inspector General of Police (Crime) on behalf of the Director General to the Secretary, Home Department is dated 14.07.2021. The order of detention is dated 12th of November, 2021. There is no explanation worth the name why it took almost five months for the detaining authority to pass the order of preventive detention.

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in ***Ashok Kumar***

v. Delhi Administration and Ors., (1982) 2 SCC 403, wherein the following observation is made:

> *"Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing."*

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the

date of the proposal. The common underlying principle in both situations would be the "live & proximate link" between the grounds of detention & the avowed purpose of detention.

16. In ***Sk. Nizamuddin v. State of West Bengal***, (1975) 3 SCC 395, this Court while examining the necessity of securing the arrest of the detenu immediately after the order of detention has held thus:

> *"It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine."*

Having held as above, Bhagwati, J. (as the learned Chief Justice then was) pointed out that if there is any delay in arresting

the detenu pursuant to the order of detention which is *prima-facie* unreasonable, the State must give reasons explaining the delay.

17. A similar contention was raised in ***Suresh Mahato v. The District Magistrate, Burdwan, and Ors***., (1975) 3 SCC 554, on the basis of the dictum laid down in two decisions of this Court, namely, ***SK. Serajul v. State of West Bengal***, (1975) 2 SCC 78, and ***Sk. Nizamuddin*** (supra) contending that the delay of the arrest of the detenu in that case showed that the detaining authority was not really and genuinely satisfied as regards the necessity for detention of the detenu for otherwise he would have tried to secure the arrest of the detenu promptly and not left him free to carry on his nefarious activities. Bhagwati, J. (as the learned Chief Justice then was) while dealing with this submission, made the following observation:

> *"Now, there can be no doubt--and the law on this point must be regarded as well settled by these two decisions--that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner."*

18. Chinnappa Reddy, J. speaking for the Bench in ***Bhawarlal Ganeshmalji v. State of Tamil Nadu***, (1979) 1 SCC 465, has explained as follow:

> *"It is further true that there must be a "live and proximate link" between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened."*
>
> (Emphasis supplied)

19. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in ***Shafiq Ahmed v. District Magistrate, Meerut and Ors***., (1989) 4 SCC 556, having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has concluded that *"there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order.*

The order, therefore is bad and must go". However, the learned Judge observed that *"whether the delay was unreasonable depends on the facts and circumstances of each case."*

20. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the "live and proximate link" between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

21. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The "live and proximate link" between the grounds of detention and the purpose of detention

stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.

VITAL MATERIAL OR VITAL FACT WITHHELD AND NOT PLACED BY THE SPONSORING AUTHORITY BEFORE THE DETAINING AUTHORITY

22. As noted above, in the case on hand, in both the cases relied upon by the detaining authority for the purpose of preventively detaining the appellant herein, the appellant was already ordered to be released on bail by the concerned Special Court. Indisputably, we do not find any reference of this fact in the proposal forwarded by the Superintendent of Police, West Tripura District while requesting to process the order of detention. The reason for laying much stress on this aspect of the matter is the fact that the appellant though arrested in connection with the offence under the NDPS Act, 1985, the Special Court, Tripura thought fit to release the appellant on bail despite the rigours of Section 37 of the NDPS Act, 1985. Section 37 of the NDPS Act, 1985 reads thus:

> *"**Section 37. Offences to be cognizable and non-bailable**.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
>
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."*

23. A plain reading of the aforesaid provision would indicate that the accused arrested under the NDPS Act, 1985 can be ordered to be released on bail only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If the appellant herein was ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any *prima facie* case against him. Had this fact been brought to

the notice of the detaining authority, then it would have influenced the mind of the detaining authority one way or the other on the question whether or not to make an order of detention. The State never thought to even challenge the bail orders passed by the special court releasing the appellant on bail.

24. In ***Asha Devi v. Additional Chief Secretary to the Government of Gujarat and Anr.***, 1979 Crl LJ 203, this Court pointed out that:

> *"… if material or vital facts which would influence the minds of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal."*

25. In ***Sk. Nizamuddin*** (supra) this Court observed as under:

> *"We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. The circumstance might quite possible have an impact on his decision whether or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the*

pendency of a criminal case against him to the District Magistrate."

26. From the above decisions, it emerges that the requisite subjective satisfaction, the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighed the satisfaction of the detaining authority one way or the other and influence his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order.

27. It is clear to our mind that in the case on hand at the time when the detaining authority passed the detention order, this vital fact, namely, that the appellant detenu had been released on bail by the Special Court, Tripura despite the rigours of Section 37 of the NDPS Act, 1985, had not been brought to the notice and on the other hand, this fact was withheld and the detaining authority was given to understand that the trial of those criminal cases was pending.

28. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively

detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.

29. In view of the aforesaid discussion, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court of Tripura is set aside. The order of preventive detention passed by the State of Tripura dated 12.11.2021 is hereby quashed and set aside. The appellant herein is ordered to be released forthwith from custody if not required in any other case.

30. Pending application, if any, also stands disposed of.

.....CJI.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(J.B. PARDIWALA)

NEW DELHI;
SEPTEMBER 30, 2022

Supreme Court of India
Vijay Narain Singh vs State Of Bihar & Ors on 12 April, 1984
Equivalent citations: 1984 AIR 1334, 1984 SCR (3) 435
Author: O C Reddy
Bench: Reddy, O. Chinnappa (J)

PETITIONER:
VIJAY NARAIN SINGH

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT12/04/1984

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

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RF 1986 SC2177 (44)
R 1988 SC1256 (12)
R 1989 SC 364 (8,9,11)
RF 1989 SC2265 (17)
F 1990 SC2069 (5)
RF 1991 SC1640 (11,12)

ACT:
Bihar Control of Crimes Act 1981-Section 12 read with section 2 (d). For preventive detention under section 12 authorities must be satisfied that the person to be detained is anti-social element as defined in section 1(d).

Bihar Control of Crimes Act, 1981-Section 2 (d)-Definition of 'antisocial element'-Interpretation of expression 'habitually' in sub-clause (i), (ii) and (iv)-Meaning of.

Interpretation of statutes-Rule of-Law of preventive detention must be strictly construed.

Practice-When person enlarged on bail by competent criminal court, great caution should be exercised in scrutinising validity of preventive detention order which is based on the very same charge which is to be tried by criminal court.

Words and Phrases-Expression `habitually'-Meaning of.

HEADNOTE:

The petitioner, who was facing a Sessions trial for offences under section 302 read with sections 120B, 386 and 511 of the Indian Penal Code, was allowed to be enlarged on bail by the High Court. But before the petitioner was released, the District Magistrate passed an order on August 16, 1983 under section 12 (2) of the Bihar Control of Crimes Act 1981 for detention of the petitioner, in order to prevent him from acting in any manner prejudicial to the maintenance of public order. The grounds of detention supplied to the petitioner related to the incidents which took place in 1975 and 1982 and also the incident which gave rise to the above-mentioned trial. The petitioner challenged the order of detention before the High Court under Article 226 of the Constitution. The High Court dismissed the petition on a technical ground. Hence this petition under Article 32 of the Constitution. The petitioner contended: (1) that the impugned order of detention was void under Article 22 (5) of the Constitution as one of the grounds was too remote and not proximate in point of time and had therefore no rational connection for the subjective satisfaction of the District Magistrate under section 12 (2) of the Act, and (2) that the impugned order of detention was male fide and consti-

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tuted a flagrant abuse of power on the part of the District Magistrate as it was meant to subvert judicial process by trying to circumvent the order passed by the High Court enlarging the petitioner on bail.

Allowing the petition by majority,

^

HELD: (Per Venkataramiah and Chinnappa Reddy, JJ.)

The law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court. [459C-D]

Section 12 of the Bihar Control of Crimes Act, 1981 makes provision for the detention of an anti-social element.

The detaining authority should, therefore, be satisfied that the person against whom an order is made under section 12 of the Act is an anti-social element as defined in section 2 (d) of the Act. The two sub-clauses of section 2 (d) which are relevant for the purposes of this case are sub-clause (i) and sub-clause (iv). Under sub-clause (i) a person who either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offences affecting the human body or Chapter XVII dealing with offences against property, of the Indian Penal Code is considered to be an antisocial element. Under sub-clause (iv) a person who has been habitually passing indecent remarks to, or teasing women or girls, is an anti-social element. In both these sub-clauses, the word 'habitually' is used. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said subclauses or an aggregate of similar acts or omissions. Whereas under sub-clause (iii) or sub-clause (v) of section 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause (i), sub-clause (ii) or in sub-clause (iv) by the person concerned to treat him as an anti-social element'. This appears to be clear from the use of the word 'habitually' separately in sub-clause (i), sub-clause (ii) and sub-clause (iv) of section 2 (d) and not in sub-clauses (iii) and (v) of section 2 (d). If the acts or omissions in question are not of the same kind or even if they are of the same kind when
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they are committed with a long interval of time between them they cannot be treated as habitual ones. [457B-458C]

In the present case the District Magistrate has relied on three incidents to hold that the petitioner is an anti-social element. They are-(o) that on April 15, 1975 the petitioner alongwith his associates had gone to the shop of a cloth dealer of Bhagalpur Town armed with an unlicensed pistol and had forcibly demanded subscription at the point of gun and (ii) that on June 17/18, 1982 the petitioner was found teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining

authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner Moreover, the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (i) of section 2 (d) of the Act, the second one falls under sub-clause (iv) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The third ground which is based on the pending Sessions case is no doubt of the nature of acts or omissions referred to in sub-clause (i) of section 2 (d). but the interval between the first ground which falls under this sub-clause and this one is nearly eight years and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-clause (i) of section 2 (d). Therefore, it is not possible to hold that the petitioner can be called an 'anti-social element' as defined by section 2 (d) of the Act. The order of detention impugned in this case therefore, could not have been passed under section 12 (2) of the Act which authorises the detention of anti-social elements only. [458D-459D]

(Per Chinnappa Reddy J. concurring)

I do not agree with the view of my brother Sen J. that 'those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires.' It is too perilous a proposition. Our Constitution does not give a carta blanche to any organ of the State to be the sole arbiter in such matters. Preventive detention is considered so raeacherous and such an anathema to civilized thought and democratic polity that safeguards against dndue exercise of the power to detain without trial, have been built into the Constitution itself and incorporated as Fundamental Rights. There are two sentinels, one at either end. The Legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are required to examine, when demanded; whether there has been any excessive detention, that is, whether the limits set by the Constitution and the legislature have been transgressed. Preventive detention is not beyond judicial scrutiny. While adequacy or sufficiency may not be a ground of challenge, relevancy and proximity are

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tertainly grounds of challenge. Nor is it for the court to put itself in the position of the detaining authority and to satisfy itself that the untested facts reveal a path of crime. [440E-441B]

I am of the view that the decision in Kamalkar Prasad Chaturvedi's case and the host of earlier cases are not distinguishable. This Court has always taken the view that remoteness in point of time makes a ground of detention

irrelevant. [441D]

Shibban Lal Saksena v. State of Uttar Pradesh & Ors., [1954] SCR 418 and Kamlakar Prasad Chaturvedi v. State of Madhya Pradesh & Anr., [1983]4 SCC 433 referred to

(Per Sen J. dissenting)

On the facts set out in the grounds of detention the petitioner answers the description of an anti-social element as defined in s. 2 (d) of the Act. [444F]

The word 'habitually' connotes some degree of frequency and continuity. 'Habitually' requires a continuance and permanence of some tendency, something that was developed into a propensity, that is, present from day-to-day. A person is a habitual criminal who by force of habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to the society in general. In simple language the word 'habitually' means 'by force of habit'. [444G-445E]

Stroud's Judicial Dictionary' 4th end., vol. 2, p. 1204 and Shorter Oxford English Dictionary, vol. 1. p. 910, referred to.

It is not necessary that because of the word 'habitually' in sub-cl. (i), sub-cl. (ii) or sub-cl. (iv), there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl. (ii) or in sub-cl. (iv) by the person concerned before he can be treated to be an anti-social element and detained by the District Magistrate under s. 12 (2) of the Act. It is not required that the nature or character of the anti-social acts should be the same or similar. There may be commission or attempt to commit or abetment of diverse nature of facts constituting offences under Chapter XVI or Chapter XVII of the Indian Penal Code. What has to be 'repetitive' are the anti-social acts. [447B-C]

The operation of s. 12 (2) of the Act cannot be confined against habitual criminals who have a certain number of prior convictions for offences of the 'character' specified. The definition of 'anti-social element' in s. 2 (d) of the Act nowhere requires that there should be a number of prior convictions of a person in respect of offences of a particular type.

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It is not correct to say that merely because there was an acquittal of a person, the detaining authority cannot take the act complained of leading to his trial into consideration. It may be that the trial of a dangerous person may end in an acquittal for paucity of evidence due to unwillingness of witnesses to come forward and depose against him out of fright. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences under Chapter XVI dealing with offences affecting

human body or Chapter XVI dealing with offences against property of the Indian Penal Code, there is no reason why he should not be considered to be an 'antisocial element'. [446G-H]

Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Sufficiency of the grounds is not for the court but for the detaining authority for the formation of his subjective satisfaction that the detention of a person is necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The sufficiency of the grounds upon which the subjective satisfaction of the detaining authority is based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision, cannot be challenged in the court accept on the ground of mala fides. It is not for the court to examine whether the grounds upon which the detention order is based are good or bad nor can it attempt to assess in what manner and to what extent each of the grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was based. [447D-449E]

Keshov Talpade v. The King-Emperor, [1943] FCR 88, referred to

Shibban Lal Saksena v. State of Uttar Pradesh & Ors., [1954] SCR 318 and Kamlakar Prasad Chaturvedi v. State of Madhya Pradesh & Anr., [1983] 4 SCC 443, distinguished

The past conduct or the antecedent history of a person can properly be taken into account in making order of detention. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order. [451B]

Merely because there is pending prosecution and the accused is in jail, that is no impediment for his detention, if the detaining authority is satisfied that his being enlarged on bail would be prejudicial to the maintenance of public order. [451D]

Fitrat Raza Khan v. State of U.P. & Ors., [1982] 2 SCC 449, Alijan Mian v. District Magistrate, Dhanbad & Ors., [1983] 3 SCC 301 and Raisuddin Babu Tamchi v. State of U. P.

JUDGMENT:

(Per Sen & Chinnappa Reddy, JJ.) It has always been the view of this Court that the detention of individuals without trial for any length of time, however short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law. [441C] & ORIGINAL JURISDICTION Writ Petition (Criminal) No. 47 of 1984.

(Under article 32 of the Constitution of India) R.K.Garg and U.S. Parsad for the Appellant. S.N. Jha for the Respondent.

The following Judgements were delivered CHINNAPPA REDDY, J. I entirely agree with my brother Venkataramiah, J. both on the question of interpretation of the provisions of the Bihar Control of Crimes Act, 1981 and on the question of the effect of the order of grant of bail in the criminal proceeding arising out of the incident constituting one of the grounds of detention. It is really unnecessary for me to add anything to what has been said by Venkataramish, J., but my brother Sen, J. has taken a different view and out of respect to him, 1 propose to add a few lines. I am unable to agree with my brother Sen, J. On several of the view expressed by him in his dissent. In particular, I do not agree with the view that `those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires.' It is too perilous a proposition. Our Constitution does not give a carta blanche to any organ of the State to be the sole arbiter in such matters. Preventive detention is considered so treacherous and such an anathema to civilized thought and democratic polity that safeguards against undue exercise of the power to detain without trial, have been built into the Constitution itself and incorporated as Fundamental Rights. There are two sentinels, one at either end. The legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are required to examine, when demanded, whether there has been any excessive detention, that is, whether the limits set by the Constitution and the legislature have been transgressed. Preventive detention is not be-

yond judicial scrutiny. while adequacy or sufficiency may not be a ground of challenge, relevancy and proximity are certainly grounds of challenge. Nor is it for the court to put itself in the position of the detaining authority and to satisfy itself that the untested facts reveal a path of crime. I agree with my brother Sen, J. when he says, "It has always been the view of this Court that the detention of individuals without trials for any length of time, however, short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law"

I am of the view that the decision in Kamlakar Prasad Chaturvedi's case and the host of earlier cases are not distinguishable. This Court has always taken the view that remoteness in point of time makes a ground of detention irrelevant. In Fitrat Raza Khanis case, the two incidents were not separated by any great length of time. On the other hand, they were bound by a strong bond of inflammable communal violence.

I agree with all that has been said by my brother Venkataramiah, J. and concur with him and direct the detenu to be set at liberty forthwith.

SEN, J. I have had the benefit of reading the opinion prepared by my learned brother Venkataramiah, J. and it is my misfortune that I cannot subscribe to the views expressed by my learned brethren. I would like to give my reasons for the dissent.

Although the petitioner claims to be a student leader and has taken his degree in Master of Arts in Sociology in the year 1982 and at present is a student of Law in the Bhagalpur Law College, and asserts that at one time, in the year 1980-81, he was elected as the President of the Post- Graduate Department of the Bhagalpur University and also selected as a Senator, the facts emerging from the grounds of detention clearly show that he has taken recourse to a life of crime. The petitioner applies for a writ of habeas corpus for quashing an order of detention dated August 16,1983 passed by the District Magistrate, Bhagalpur on being satisfied that his detention was necessary with a view to preventing him 'from acting in any manner prejudicial to the maintenance of public order'. The facts have been set out in the majority opinion and all that is necessary is to mention the horrendous incident which is the direct and proximate cause of the impugned order of detention.

It appears that there was a gruesome murder of two young sons of Kashinath Bajoria, owner of Bajoria petrol pump of Bhagalpur, on April 20, 1983. In the course of investigation by the police it transpired that they were kidnapped from the petrol pump on the earlier day i.e. on April 19, 1983 and the petitioner Vijay Narain Singh demanded a ransom of Rs. 50,000 from the father of the victims. The demand for ransom having not been fulfilled, the two boys were done to death brutally and their dead bodies were thrown at a place near Mount Assis School and Zila School and were discovered the next morning. On the basis of first information report a case was registered at Bhagalpur Kotwali (Police Case No. 281 dated April 20, 1983) under ss. 364, 302 and 201, all read with s. 34 and s. 120B of the Indian Penal Code, 1860 against the petitioner Vijay Narain Singh, his brother Dhanonjoy Singh, one Bimlesh Mishra and two unknown accused. The petitioner along with his co-accused has been committed to the Court of Sessions to stand his trial in Sessions Case No. 348 of 1983 and charges have been framed under s. 302 read with s. 34/120B, 386 and 511 of the Indian Penal Code and the case was set down for evidence on February 27, 1984 A learned Single Judge of the Patna High Court by his order dated August 9, 1983 appears to have directed that the petitioner be enlarged on bail of Rs. 10,000 with two sureties of the like amount to the satisfaction of the Chief Judicial Magistrate, Bhagalpur. The District Magistrate, Bhagalpur on being satisfied that his detention was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention on August 16, 1983 before the petitioner could be released on bail But the petitioner moved a petition in the Patna High Court for grant of a writ of habeas corpus while he was still in jail challenging the impugned order of detention. When the matter came up for hearing before the High Court on October 5, 1983, the learned Judges adverted to the counter-affidavit filed on behalf of the State that the impugned order of detention was prepared in advance for service on the petitioner when he comes out of jail on the strength of the bail order issued by the High Court but by mistake the three copies of the order instead of being sent to the District Magistrate's office for service were wrongly delivered at the Central Jail, Bhagalpur. The learned Judges accordingly by their order of even date dismissed the writ petition holding that they were satisfied that the petitioner was not in detention under the impugned detention order. They however observed that if and when the petitioner was served a copy of the detention order and placed under detention in prison, he could file a fresh petition for a writ of habeas corpus. In stead of moving the High Court, the petitioner has filed this petition under Art. 32 of the Constitution before this Court. The order of detention is in two parts, the first of which lays a factual basis for making the order on the ground that the petitioner is an anti-social element. The second part of the impugned order is styled as grounds. But it would be

seen that the grounds mentioned therein are one and the same viz. his detention was necessary with a view to preventing him 'from acting in any manner prejudicial to the maintenance of public order'.

At the hearing, learned counsel for the petitioner advanced no submission that the petitioner was not an 'anti- social element' within the meaning of s. 12 (2) of the Bihar Control of Crimes Act, 1981 but rested himself content by advancing a twofold submission, namely: (1) The impugned order of detention passed by the District Magistrate, Bhagalpur under s. 12(2) of the Act must be held to be void under Art. 22(5) of the Constitution as one of the grounds was too remote and not proximate in point of time and had therefore no rational connection for the subjective satisfaction of the District Magistrate s. 12(2) of the Act. He relied upon the principles laid down by this Court in Shibban Lal Saksena v. State of Uttar Pradesh & Ors. (1) followed in serveal subsequent cases, and particularly on the majority decision in the recent case of Kamlakar Prasad Chaturvedi v. State of Madhya Pradesh & Anr(2 And The impugned order of detention was mala fide and constitutes a flagrant abuse of power on the part of the District Magistrate as it is meant to subvert the judicial process by trying to circumvent the order passed by the High Court enlarging the petitioner on bail. There is, in my opinion, no substance in any of these contentions but before. I deal with them I must touch upon the question raised in the majority opinion.

Inasmuch as the District Magistrate has chosen to take recourse to s. 12(2) of the Act which is designed to make special provisions for control and suppression of anti- social elements with a view to maintenance of public order, the question at once arises : Whether the petitioner answers the description of an 'antisocial element' as defined in s. 2(d) of the Act. 'Anti-social element' as defined in s. 2(d) means-

> 2(d) Anti-social element" means a person who is-
>
> (i) either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or
>
> (ii) habitually or abets the commission of offences under the Suppression of Immoral Traffic in women & Girls Act, 1956; or
>
> (iii) who by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups of castes or communities; or
>
> (iv) has been found habitually passing indecent remarks to or teasing women or girls; or
>
> (v) who has been convicted of an offence under ss 25, 26, 27, 28 or 29 of the Arms Act, 1959."

There is no reasonable doubt that on the facts set out in the grounds of detention the petitioner answers the description of an anti-social element; but the suggestion in that he is not to be treated as one under s. 12(2) of the Act because the definition of 'anti-social element' in s. 2(d) of the Act is too narrow to include it. The word 'habitually' connotes some degree of frequency and continuity. 'Habitually' requires a continuance and permanence of some tendency, something that has developed into a propensity, that is, present from day-to-day; Stroud's Judicial Dictionary, 4th edn., vol. 2, p. 1204.

My learned brother Venkataramiah, J. is inclined to give a restricted meaning to the word 'habitually' as denoting 'repetitive' and he is of the view that no order of detention under s. 12(2) of the Act could be made on the basis of a 'single instance', as a single act cannot be said to be forming the habit of the person. That is to say, the act complained of must be repeated more than once and be inherent in his nature Further, he is inclined to think that section under s. 12(2) of the Act can only be taken in resect of persons against whom there are verdicts of guilt after the conclusion of trials. According to him, merely on the basis of institution of criminal cases a person cannot be labelled as an anti-social element. I find considerable difficulty in subscribing to either of his views.

According to its ordinary meaning, the word 'habitual' as given in Shorter Oxford English Dictionary, vol. 1, p. 910 is :

> "A. adj (1) Belonging to the habit or inward disposition, inherent or latent in the mental constitution;
>
> (2) of the nature of a habit; fixed by habit; constantly repeated, customary.
>
> B. A habitual criminal, drunkard, etc."

A person is a habitual criminal who by force of habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to the society in general. In strengthen language the word 'habitually' means 'by force of habit'. The Act appears to be based on Prevention of Crime Act 1908 (c-59). By Prevention of Crime Act, as amended by the Indictments Act, 1915, a person after three previous convictions, after attaining sixteen years of age could, with the consent of the Director of Public Prosecution in certain cases, be charged with being a habitual criminal and, if the charge was established, he could, in addition to a punishment of penal servitude, in respect of crime for which he has been so convicted, receive a further sentence of not less than five years or more than 10 years, called a sentence of preventive detention. Upon this question of a man's leading persistently a dishonest or criminal life, where there has been a considerable lapse of time between a man's last conviction and the commission of the offence which forms the subject of the primary indictment at the trial, notice containing particulars must have been given and proved of the facts upon which the prosecution relied for saying that the offender is leading such a life.

If, on the other hand, the time between a man's discharge from prison and the commission of the next offence is a very snort one, it may be open to the jury to find that he is leading persistently a dishonest or criminal life by reason of the mere fact that he has again committed an offence so soon after his discharge from a previous one, provided the notice has state this as a ground. This essentially is a question of fact. The scheme under the English Act is entirely different where a person has to be charged at the trial of being a habitual criminal. Therefore, the considerations which govern the matter do not arise in case of preventive detention under s. 12(2) of the Act.

I find it difficult to share the view that whereas under sub-cl. (iii) or sub-cl. (v) of s. 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-cl. (i), sub-cl. (ii) or sub-cl. (iv) because of the word 'habitually' there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl.

(ii) or in sub-cl. (iv) by the person concerned to treat him as an 'anti-social element'.

I also do not see why s. 12 (2) of the Act should be confined in its operation against habitual criminals who have a certain number of prior convictions for offences of the 'character' specified. The definition of 'anti-social element in s.2 (d) of the Act nowhere requires that there should be number of prior convictions of a person in respect of offences of a particular type. I cannot also share the view that the commission of an act referred to in one of the sub-cl. (i), sub-cl. (ii) or sub-cl. (iv) of s 2 (d) and any other act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an 'anti-social element'. Further, I do not think it is correct to say that merely because there was an acquittal of such a person, the detaining authority cannot take the act complained of leading to his trial into consideration. It may be that the trial of a dangerous person may end in an acquittal for paucity of evidence due to unwillingness of witnesses to come forward and depose against him out of fright. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offences affecting human body or Chapter XVII dealing with offences against property of the Indian Penal Code, there is no reason why he should not be considered to be an 'anti-social element'.

It is not difficult to conceive of a person who by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. It however does not follow that because of the word 'habitually' in sub-cl. (i), sub-cl. (ii) or sub-cl (iv), there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl. (ii) or in sub-cl. (iv) by the person concerned before he can be treated to be an anti-social element and detained by the District Magistrate under s.12(2) of the Act. In my view, it is not required that the nature or character of the anti- social acts should be the same or similar. There may be commission or attempt to commit or abetment of diverse nature of acts constituting offences under Chapter XVI of the Indian Penal Code. What has to be 'repetitive' are the anti-social acts.

Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Sufficiency of grounds is not

for the Court but for the detaining authority for the formation of his subjective satisfaction that the detention of a person under s. 12(2) of the Act is necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The power of preventive detention by the District Magistrate under s.12(2) is necessarily subject to the limitations enjoined on the exercise of such power by Art. 22(5) of the Constitution. It has always been the view of this Court that the detention of individuals without trial for any length of time, however short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti- social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law. The Court has therefore in a series of decisions forged certain procedural safeguards in the case of preventive detention of citizens. As observed by this Court in Narendra Purshotam Umrao v. B.B. Gujral(1), when the liberty of the subject is involved, whether it is under the Preventive Detention Act or the Maintenance of Internal Security Act or the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act or any other law providing for preventive detention-

> "It is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupul-
>
> ously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law."

Nonetheless, the community has a vital interest in the proper enforcement of its laws particularly in an area where there is worsening law and order situation, as unfortunately is the case in some of the States today in dealing effectively with persons engaged in anti-social activities seeking to create serious public disorder by ordering their preventive detention and at the same time in assuring that the law is not used arbitrarily to suppress the citizen of his right to life and liberty. The impugned order of detention has not been challenged on the ground that the grounds furnished were not adequate or sufficient for the satisfaction of the detaining authority or for making of an effective representation. The Court must therefore be circumspect in striking down the impugned order of detention where it meets with the requirements of Art. 22(5) of the Constitution and where it is not suggested that the detaining authority acted mala fide or that its order constituted an abuse of power.

Turning to the merits of the contentions raised, I am quite satisfied that the impugned order is not vitiated because some of the grounds were non-existent or irrelevant or were too remote in point of time to furnish a rational nexus for the subjective satisfaction of the detaining authority. The two decisions in Shibban Lal Saksena's and Kamlakar Prasad Chaturvedi's cases are clearly distinguishable on facts. In Shibban Lal Saksena's cases the detenu had been supplied with two grounds for his detention. Subsequently, the detaining authority revoked one of the grounds communicated to him earlier. It was contended on his behalf that in such circumstances the detention was illegal and he was entitled to be released. The contention on behalf of the State was that although one of the grounds upon which the original order of detention was based was unsubstantial or non-existent and could not be made a ground of detention, nonetheless the remaining ground was sufficient to sustain the detention order. The Court rejected this contention

and held that it was stated that the sufficiency of the grounds upon which the subjective satisfaction of the detaining authority is based, provided they have a rational probative value and are not extraneous so the scope or purpose of the legislative provision cannot be challenged in the Court except on the ground of mala fides. It was observed:

> "A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under s.7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself, in its communication dated the 13th of March, 1953, has plainly admitted that one of the grounds upon which the original on or of detention was passed is unsubstantial or non-existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under s.3(1)
>
> (a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative."

The question was whether in such circumstances the original order made under s.3(1) (a) of the Preventive Detention Act, 1950 could be allowed to stand. The Court laid down that if one of the two grounds was irrelevant for the purpose of the Act or was wholly illusory, this would vitiate the detention order as a whole. That is a principle well-settled since the well-known case of Keshav Talpade v. The King Emperor(1): The Court reiterated the principle and said that it was not for the Court to examine whether the two grounds upon which the detention order was based were good or bad nor could it attempt to assess in what manner and to what extent each of the grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was based. It then added:

> "To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

Following the decision in Shibban Lal Sakesena's case, the Court in Kamlakar Prasad Chaturvedi's case, supra, by a majority of 2:1 held the detention order dated May 6, 1983 passed by the District Magistrate under s.3(2) of the National Security Act, 1980 to be invalid inasmuch as some of the grounds were found to be too remote and not proximate in point of time. Per contra, Desai, J. following the recent decision of this Court in Fitrat Raza Khan v. State of U.P. & Ors held that there is no rigid or mechanical test to be applied. In Fitrat Raza Khaa's case, the Court held that when both the incidents there were viewed in close proximity, the propensity of the petitioner to resort to prejudicial activity became manifest.

In Fitrat Raza Khan's case, supra, the first incident was of August 13, 1980 when the communal riots broke out in Moradabad city, and the second of July 24, 1981. Although there was a lapse of a year between the two incidents, the second incident of July 24, 1981 was just on the eve of the Id festival and the ground alleged was that the petitioner was trying to instigate the Muslims to communal violence by promise of better arms, with a view to an open confrontation between the two communities. It was observed that the two grounds as set out in the order of detention were nothing but narration of facts brining out the antecedent history of the detenu and that the past conduct or the antecedent history of a person can properly be taken into account in making an order of detention and had observed:

> "It is true that the order of detention is based on two grounds which relate to two incidents, one of August 13, 1980, and the other of July 24, 1981, i.e., the second incident was after a lapse of about a year, but both the incidents show the propensities of the petitioner to instigate the members of the Muslim community to communal violence. The unfortunate communal riots which took place in Moradabad city led to widespread carnage and bloodshed resulting in the loss of many innocent lives. The memory of the communal riots is all too recent to be a thing of the past. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order. ********** It cannot be said that the prejudicial conduct or antecedent history of the petitioner was not proximate in point of time and had no rational connection with the conclusion that his detention was necessary for maintenance of public order." It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order.

Learned counsel for the petitioner also submitted that the ordinary criminal process could not be circumvented by resort to preventive detention. In somewhat similar circumstances, the Court recently in Alijan Mian v. District Magistrate, Dhanbad & Ors(1). held that merely because there was pending prosecution and the accused were in jail, that was no impediment for their detention under s.3(2) of the National Security Act, 1980 if the detaining authority was satisfied that their being enlarged on bail would be prejudicial to the maintenance of public order. The same view has been reiterated by this Court in Raisuddin Babu Tamchi v. State of U.P. & Anr(2).

For my part, I would therefore, for the reasons stated, dismiss the writ petition as well as the connected special leave petition.

VENKATARAMIAH, J. This is a petition under Article 32 of the Constitution. The petitioner has questioned in this case the validity of an order of detention dated August 16, 1983 passed by the District Magistrate, Bhagalpur, State of Bihar, directing the detention of the petitioner under sub-section (2) of section 12 of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as 'the Act') read with Notification No. H(P) 6844 dated June 20, 1983 of the Government of Bihar vesting the

powers of detention in the District Magistrate, Bhagalpur.

The petitioner states that he having passed him M.A. Examination was studying law in the Bhagalpur Law College in the year, 1983. On the basis of information received on April 20, 1983 about the unnatural deaths of two persons within the jurisdiction of the Bhagalpur Kotwali Police Station, the police conducted investigation and at the conclusion of that investigation they filed a charge sheet in the court of the Magistrate having jurisdiction over the area in question, who committed him alongwith some others to the Court of Sessions for being tried for offences punishable under section 302 read with section 120B, 386 and 511 of the Indian Penal Code. The said case is even now pending. The petitioner moved the High Court of Patna for enlarging him on bail during the pendency of the said Session trial. On August 8, 1983, the bail petition was heard and the High Court made an order enlarging the petitioner on bail, the relevant part of which read thus:

> "8.8.83. Heard learned counsel for the petitioner and the State.
>
> The submission of the petitioner is that he has not been named in the F.I.R. and the only material against him is that when Kashi Nath Bajoria, father of the deceased learnt about taking away of his sons from the petrol pump he went to the house of petitioner and his brother Dhananja Singh and enquired about his sons. On his enquiry the petitioner, his brother Bijoy and his mother demanded a sum of Rs 50,000 for release of his sons. It is further submitted that three persons gave their confessional statement but even they did not name the petitioner-
>
> Whether the petitioner was in conspiracy or had hand in the crime will be examined at the trial if such occasion arises. In the circumstances of the present case, let petitioner be released on bail of Rs 30,000 (Rupees ten thousand with two sureties of the like amount each) to the satisfaction of the Chief Judicial Magistrate, Bhagalpur in Bhagalpur Kotwali P.S. Case No. 281/83 dated 20.4.83."

Even before the petitioner could furnish bail and secure his release from jail as per the above order, the District Magistrate passed the impugned order of detention on August 16,1983, the relevant part of which reads thus:

> Order No. 151 dated 16.8.83 Whereas I am satisfied that with a view to preventing Shri Vijay Singh s/o Late Shri Jagannath Singh of Mohalla Mundichak P.S. Kotwali. District Bhagalpur from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order that he be detained.
>
> Now, therefore, in exercise of the powers conferred by (Bihar Act 7 of 1981) sub-section 2 of section 12 of the Bihar Control of Crimes Act, 1981 read with Notification H(P) 6844 dated 20.6.83 of the Government of Bihar vesting the powers of detention in District Magistrate, Bhagalpur, I hereby direct that Shri Vijay Singh be detained.

He shall be detained in Special Central Jail, Bhagalpur and classified as C and in division III.

District Magistrate Bhagalpur"

The grounds of detention in support of the above order read thus:

"In pursuance of section 17 of the Bihar Control of Crimes Act, 1981 (Bihar Act 7 of 1981) Shri Vijay Singh s/o Late Shri Jagannath Singh of Mohalla Mundichak, P.S. Kotwali, District Bhagalpur is informed that he was been directed to be detained in my Order No. 151/C dated 16.8.83.

The following incidents conclusively show that Shri Vijay Singh is an "anti-social element". His criminal activities enumerated below date back to the year 1975.

(i) On 15.4.75 Vijay Singh alongwith his associates went to the shop of Gopal Ram Ramchandra, cloth dealer in Hariapatti market of Bhagalapur town armed with unlicensed pistol and forcibly demanded subscription at the point of pistol. On refusal, he created a row in the shop and indulged in filthy abuses, as a result of which the shopkeepers of the area became terribly panicky and feeling of uttar insecurity prevailed in the area. A case was instituted in Kotwali P.S. vide Case No. 25 dated 15-4-75 under section 144/448 I.P.C. In this case, he was chargesheeted.

(ii) On 17/18-6-82 at night Vijay Singh was found teasing and misbehaving with females returning from Cinema hall at Khalifabagh Chowk, one of the busiest throughfares of the town. On information, the police rushed to the spot. Vijay Singh had the avdacity to misbehave with the police personnel including the Dy. S.P. (Hqrs.) who happened to reach there. A case was instituted in this connection vide Kotwali P.S. Case No. 349 dated 18-6-82 u/s 294/353 I. P. C. In this case, Vijay Singh was chargesheeted.

Shri Vijay Singh has been detained on the following grounds:-

Grounds:

On 19.4.1983, the criminal activities of Vijay Singh mounted to its peak, when two young sons of Shri Kashinath Bajoria, owner of Bajoria Petrol Pump, Bhagalpur, namely, Krishna Kumar Bajoria and Santosh Kumar Bajoria were kidnapped from their petrol pump. Vijay Singh demanded a sum of Rs 50,000 (Fifty thousand) from their father as ransom. As the demand could not be fulfilled, the above-named two innocent young men were done to death in a ghastly manner and their dead bodies thrown away near Mount Assisi School and Zila School which were discovered next morning. These double murders caused panic throughout the Bhagalpur Town and public order was gravely disturbed. Only after intensive deputation of police force,

public confidence was restored and public order maintained. A case was instituted vide Kotwali P.S. Case No. 281 dated 20-4-83 under sections 364/302/201/34/120(b) I.P.C Charge-sheet has been submitted in this case against Vijay Singh and others. Investigation shows that Vijay Singh is mainly instrumental to this heinous crime.

(Copy of F.I.R., brief of the case and copy of Memo of evidence enclosed).

In the circumstances, I am satisfied that if he is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of public order.

For prevention of such activities, I considered his detention necessary. Shri Vijay Singh is informed that he may make a representation in writing against the order under which he is detained. His representation, if any, may be addres sed to the Deputy Secretary, Home (Police) Department, Government of Bihar, Patna, and forwarded by the Superintendent of Jail through special messenger with a copy to the undersigned.

Sd/-S.K. Sharma 16/8/83 District Magistrate Bhagalpur"

Aggrieved by the above order of detention the petitioner filed a petition under Article 226 of the Constitution before the High Court. On behalf of the detaining authority it was contended that the detention order had been prepared in advance for service on the petitioner when he came out of the jail on the strength of the bail order which he had obtained in the criminal case; that all the copies of order had been sent to the District Magistrate's office but by mistake of the messenger three copies had been wrongly delivered at the Central Jail Bhagalpur where the petitioner had been kept and that when the mistake was detected by the Superintendent of the Central Jail, he did not serve the copy of the order and had returned all the copies. It was urged that since the order of detention had not been served on the petitioner, the petition was not maintainable. Accepting the above plea, the High Court held that there was no occasion to quash the order of detention as the petitioner had not been detained pursuant to it. Accordingly it rejected the prayer of the petitioner. Thereupon the petitioner filed the above writ petition before teis Court, He has also filed a special leave petition being S.L.P. (Criminal) 3306 of 1983 against the order of the High Court.

In this Court, the respondents have not depended upon the technical plea raised by them before the High Court but have tried to justify the order of detention on merits.

I shall give a brief summary of the relevant provisions of the Act. The Act was passed in 1981. It was enacted, as its long title suggests, to make special provisions for the control and suppression of antisocial elements with a view to maintenance of public order. Section 2(d) of the Act defines the expression 'Anti-Social Element' thus:

"2.(d) "Anti-Social Elements" means a person who is

(i) either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code ; or

(ii) habitually comints or abets the commission of offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 ; or

(iii) who by words or otherwise promotes or attempt to promote on grounds of religion, race, language, cast or community or any other grounds what-soever feelings of enmity or hatred between different religions, racial or language groups of castes or communities ; or

(iv) has been found habitually passing indecent remarks to or teasing women or girls ; or

(v) who has been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959." (underlining by us) Section 3 to 11 of the Act deal with the provisions relating to externment of anti-social elements. Chapter II of the Act deals with the provisions providing for the preventive detention of anti-social elements. The relevant part of section 12 of the Act which is in Chapter II of the Act reads :

"12. Power to make order detaining certain persons. The State Government may-(1) If satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order and there is reason to fear that the activities of anti-social element cannot be prevented otherwise than by the immediate arrest of such person make an order directing that such anti- social element be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the power conferred up-on by the said sub-section.. (underlining by us) It is seen from section 12 of the Act that it makes provision for the detention of an anti-social element. If a person is not an anti-social element, he cannot be detained under the Act. The detaining authority should, therefore, be satisfied that the person against whom an order is made under section 12 of the Act is an anti-social element as defined in section 2 (d) of the Act. Sub-clauses (ii), (iii) and (v) of section 2 (d) of the Act which are not quite relevant for the purposes of this case may be omitted from consideration for the present. The two other sub-clauses which need to be examined closely are sub-clauses (i) and

(iv) of section 2 (d). Under sub-clause (i) of section 2 (d) of the Act, a person who either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offenences affecting the human body or Chapter XVII dealing with offences against property, of the Indian Penal Code is considered to be an anti-social element. Under sub-clause (iv) of section 2 (d) of the Act, a person who has been habitually' passing indecent remarks to, or teasing women or girls, is an anti-social element. In both these sub-clauses the word 'habitually' is used. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. If connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word 'habitually' separately in sub-clause

(i), sub-clause (ii) and sub-clause (iv) of section 2 (b) and not in sub-clauses (iii) and (v) of section 2 (d) . If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the sub-

clauses (i) to (v) of section 2 (d) was sufficient to make a person an 'anti-social element', the definition would have run as 'Anti-Social Element' means 'a person who habitually is .....' As section 2 (d) of the Act now stands, whereas under sub-clause (iii) or sub-clause (v) of section 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-clause (i), sub-clause (ii) or sub-clause

(iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause

(i), sub-clause (ii) or in sub-clause (iv) by the person concerned to treat him as an 'anti-social element'. Commission of an act or omission referred to in one of the sub-clauses (i). (ii) and (iv) and of another act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an 'anti-social element'. A single act or omission falling under sub-clause

(i) and a single act or omission falling under sub-clause

(iv) of section 2 (d) cannot, therefore, be characterised is a habitual act or omission referred to in either of them. Because the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omission in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between the they cannot be treated as habitual ones.

In the present case the District Magistrate has relied on three incidents to hold that the petitioner is an anti- social element. They are-(i) that on April 15, 1975 the petitioner alongwith his associates had gone to the shop of a cloth dealer of Bhagalpur Town armed with an unlicensed pistol and had forcibly demanded subscription at the point of a gun and (ii) that on June 17/18, 1982 the petitioner

was found teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner. Moreover the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (i) of section 2(d) of the Act, the second one falls under sub-clause (iv) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The District Magistrate does not appear to have applied his mind to the above aspects of the case. The third ground which is based on the pending Sessions case is no doubt of the nature of acts or commissions referred to in sub-clause

(i) of section 2(d) but the interval between the first ground which falls under this sub-clause and this one is nearly eight years and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-clause (i) of section 2 (d). When I say so I do not certainly minimise the gravity of the offence alleged to have been committed by the petitioner which is still to be tried by the Sessions Court. If the petitioner is found guilty by the Court, he will have to be awarded appropriate punishment. But the point for consideration now is whether the filing of the charge sheet is sufficient to bring the petitioner within the mischief of the Act. The Court should examine the case without being overwhelmed by the gruesomeness of the incident involved in the criminal trial. It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that tee liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.

Having given my anxious consideration to the case, I am of the view that it is not possible to hold that the petitioner can be called an 'anti-social element' as defined by section 2 (d) of the Act. The order of detention impugned in this case, therefore, could not have been passed under section 12 (2) of the Act which authorises the detention of anti-social elements only.

Before leaving this case, I should state that a number of decisions were cited before us in which it had been held that an order of detention based on a criminal charge which is still to be tried may not be invalid and that an order granting bail by a criminal court cannot be a bar to the passing of an order of detention. But I have not found it necessary to deal with them here as they would have become relevant only if I had been satisfied that the petitioner was an anti-social element. Moreover the orders of detention questioned in those cases were governed by the provisions of the statutes under which they had been issued.

In the result, I quash the order of detention passed against the petitioner. The petition is accordingly allowed. The petitioner shall be set at liberty forthwith unless he is required to be in custody on some other ground.

H.S.K. Petition allowed.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5506 of 2023

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SANJAY VAGHJIBHAI DESAI

Versus

STATE OF GUJARAT

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Appearance:
MR HR PRAJAPATI(674) for the Petitioner(s) No. 1
MS NISHKA H PRAJAPATI(10717) for the Petitioner(s) No. 1
for the Respondent(s) No. 2,3
MR ADITYASINH JADEJA, AGP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 05/05/2023
ORAL ORDER
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Pursuant to the orders passed by this Court, the State Government has made its efforts and has framed a policy vide Circular dated 03.05.2023 regulating the process of passing the detention orders under Gujarat Prevention of Anti-Social Activities Act, 1985. The same is tendered to this Court. A perusal of the policy dated 03.05.2023 reveals that the same extensively addresses the concern/issues, which are raised before this Court. However, learned advocate Mr.Prajapati has further suggested three facets, which are required to be added in the aforesaid policy in light of the judgment of the Supreme Court. The same are incorporated as under:-

> *"(1) નામદાર સુપ્રીમ કોર્ટ* ***દ્વારા State of Manipur versus Buyamayum Abdul Hanan @ Anand (2022 (15) Scale 340: JT 2022 (10) SC 264)*** *ના કેસમાં પ્રસ્થાપિત કરવામાં આવેલ સિધ્ધાંત નીચે મુજબ છે:-*

" 21. Thus, the legal position has been settled by this Court that the right to make representation is a fundamental right of the detenu under Article 22(5) of the Constitution and supply of the illegible copy of documents which has been relied upon by the detaining authority indeed has deprived him in making an effective representation and denial thereof will hold the order of detention illegal and not in accordance with the procedure contemplated under law."

આમ અટકાયત ના હુકમ સાથે જે પણ દસ્તાવેજોની નકલ અટકાયતીને આપવામાં આવે તે સરળતાથી વાંચી શકાય હોય તેવા હોવા જોઈએ તે વાતનું ખાસ ધ્યાન રાખવાનું રહેશે.

(2) અટકાયતી સત્તા પાસે પાસા કાયદા હેઠળ દરખાસ્ત આવે એટલે તરત જ આવી દરખાસ્ત વિચારણા હેઠળ લઈ યોગ્ય હુકમ કરવો જોઈએ વાજબી કારણ વગર આવી દરખાસ્ત પેન્ડિંગ રાખવી નહીં. નામદાર સુપ્રીમ કોર્ટ ***દ્વારા Sushanta Kumar Banik versus State of Tripura And Others (AIR 2022 SC 4715)*** *ના કેસમાં નીચે મુજબનો સિધ્ધાંત પ્રસ્થાપિત કરવામાં આવેલ છે:*

"14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings. "

(3) *પાસા નો હુકમ કરતી વખતે જો અટકાયતી કોઈ કેસ માં જેલ માં છે કે જામીન ઉપર છૂટેલ છે તે બાબત નો ઉલ્લેખ અટકાયતના હુકમમાં કરવાનો રહેશે. જે*

કિસ્સામાં અટકાયતી જેલમાં હોય તો કયા કારણસર આવો અટકાઈ જેલ માં છે અને તેની જામીન ઉપર છૂટવાની સંભાવનાઓ કેટલી તે વિશે યોગ્ય ચકાસણી કર્યા બાદ જ અટકાયતનો હુકમ કરવાનો રહેશે. અટકાયતના હુકમ માં આ વિશે નો સ્પષ્ટ ઉલ્લેખ કરવાનો રહેશે. જો અટકાયતી જામીન ઉપર હોય તો તેની જામીન અરજી અને જામીન હુકમ વિચારણામાં લેવાના રહેશે અને ત્યારબાદ યોગ્ય કારણો જણાય તો જ અટકાયત નો હુકમ કરવાનો રહેશે. આવા કારણોનો ઉલ્લેખ અટકાયતના હુકમમાં કરવો જરૂરી છે. અટકાયતના કારણો સાથે જો અટકાયતી જામીન ઉપર હોય તો તેની જામીન અરજી અને જામીન હુકમ અટકાયતી ને આપવાના રહેશે.''

2. Thus, in addition to the instructions which the State Government have promulgated vide policy/Circular dated 03.05.2023, the aforementioned instructions shall also be considered while passing the orders of detention. An addendum to the aforesaid Circular dated 03.05.2023 shall be issued by the State Government or in the alternative it will also be open for the State to issue fresh Circular/consolidated guidelines incorporating the aforementioned instructions along with the Circular dated 03.05.2023.

3. It is also noticed by us that the Circular/policy is blissfully silent with regard to the accountability fixed on the authority in case the same are violated while passing the detention order. Hence, we direct the State Government to issue necessary circular in the form of administrative instructions to all the concerned authorities to strictly comply with the aforesaid guidelines. It is further clarified that in case it is found or established that the guidelines are flagrantly violated and are not followed, this Court will view the same very seriously, since the freedom of a person is supreme and is recognized and embedded in Article 21 of

the Constitution of India. A person cannot be detained and his freedom cannot be curtailed or restricted by adopting a procedure *de hors* the rule of law. While taking cognizance of such violation, this Court will not be hesitant in issuing necessary orders/directions for taking necessary action against the erring officer or the authority.

4. So far as the merits of the matter are concerned, learned AGP has submitted that as on today no order of detention is passed. It goes without saying that as and when the detention order is passed against the petitioner, the respondent authority shall follow the guidelines dated 03.05.2023 along with the guidelines, which are incorporated in the present order.

5. The State Government is directed to do the needful, as directed by this Court and issue supplementary or consolidated guidelines within a period of 12 weeks. The same shall also be published on its website for easy access for the public at large.

6. With this observation, the present petition stands disposed of.

7. Registry shall communicate this order to the Department of Home for necessary compliance.

(A. S. SUPEHIA, J)

(DIVYESH A. JOSHI,J)

ABHISHEK/PC-12