Suraj Pal Sahu

Vs

State of Maharashtra and Others

Writ Petition (Criminal) No. 296

(R. S. Pathak, Sabyasachi Mukharji, Ranganath Misra JJ)

25.09.1986

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Writ Petition No. 296 of 1986 and Special Leave Petition (Criminal) No. 1265 of 1986 are connected and relate to an order of detention of one Rampal Sahu dated December 16, 1985 under Section 3(2) of the National Security Act, 1980 (hereinafter called the 'said Act'). These are dealt with the by this judgment.

2. The said Rampal Sahu (hereinafter called 'the detenu') was detained by the aforesaid order which was served on him on December 17, 1985 with the grounds of detention. According to the writ petition as well as the special leave petition the grounds of detention served on the detenu did not disclose any violation of the Essential Commodities Act or Essential Services Maintenance Act. In the premises it is the contention of the petitioner that detention was illegal and unconstitutional. The State of Maharashtra approved the detention on December 24, 1985.

3. The detention order as mentioned hereinbefore was under Section 3(2) of the said Act. The detenu was arrested on December 17, 1985 and the grounds of detention were served on the same day. The order alleged, inter alia, that since the year 1979, the detenu had been continuously engaging himself in committing acts prejudicial to the maintenance of the supplies and services essential to the community i.e. removing of permanent way material stocked along rail lines for maintenance of rail tracks, removing parts of carriages, wagons and Signal Telecommunication materials utilised for repair of railway wagons and maintenance of signals. It was further alleged that the said detenu used to arrange to remove railway property with the help of his 'gang' and stock the same in his godown, himself remaining behind the scene. It was alleged that in a number of cases railway properties were loaded and carried away in truck No. MHG 6302 which was owned by the detenu. It was stated that the he was indulging in removing railway material which was stacked along the rail tracks for the maintenance of the tracks, thus the work of maintenance of the tracks was hampered and quick movement of the wagons loaded with essential commodities such as food grains, arms, ammunition required by the general public and the armed forces could not be made. Such acts were prejudicial, according to the order of detention, to the maintenance of supplies and services essential to the community.

4. The grounds further indicated six different cases. The case numbers were :

> (1) P.S. Deori Crime No. 69/83 u/s 379, 34 IPC decided by the J.M.F.C. Sakoli vide C.C. No. 50/84.

(2) R.P.F. Post Ajni Crime No. 20/84 u/s 3 RP (UP) Act, 1966. An appeal u/s 378 of the Code of Criminal Procedure is being filed in the High Court against the order of acquittal dated May 24, 1985 passed by the J.M.F.C., Railway Court, Nagpur, vide C.C. No. 362/84.

(3) R.P.F. Post Ajni Crime No. 43/84 u/s 3 RP (UP) Act, 1966 pending trial before the J.M.F.C. (Rly.), Nagpur, vide C.C. No. 153/85.

(4) P.S. Kamptee Crime No. 195/84 u/s 379, 411, 34 IPC pending trial before the J.M.F.C., VIII Court, Nagpur, vide C.C. No. 200/84.

(5) P.S. Kamptee Crime No. 53/85 u/s 379, 34 IPC under investigation.

(6) R.P.F. Post Ajni Crime No. 41/85 u/s 3 RP (UP) Act pending trial before the J.M.F.C. (Rly.) Court, Nagpur, vide C.C. No. 212/85.

5. The incident in the first case was alleged to have taken place on December 26, 1983. It was alleged that a truck bearing Registration No. MGH 6302 was standing near the iron bridge on the National Highway and some thieves were trying to cut the steel girders meant for constructing road bridge for removing the same. Other particulars were named therein and the names of two persons were also mentioned. There was some stealing. The stolen property including steel girders and trucks mentioned above were seized. It appears that the truck was owned by the detenu. The detenu was arrested on February 26, 1984 and the aforesaid two persons were convicted under Section 379 read with Section 34, IPC. The detenu, however, was acquitted.

6. In the second case report had been received that some railway material including 32 lbs. CST 9 plates and tie bars were stolen from the railway track in between Borkhedi and Sindi Railway Stations by a gang of culprits who threatened the witness, i.e., the chowkidar on duty and took away the railway property in a Matador. During inquiry in the above complaint, it transpired that the stolen property valued unlawfully kept by the detenu in his godown at Nagpur and a search warrant was obtained and the stolen railway property valued at Rs. 25,000 was recovered from the godown of the detenu on June 19, 1984. The detenu was acquitted by the Magistrate but an appeal had been preferred in the High Court of Nagpur and the same was pending when the detention order was passed. It was further stated that the permanent way material was essential for the maintenance of the railway tracks and the safety of the travelling public. It was normally kept at secure places near the tracks for ready availability for replacing the broken or unserviceable material in the track. By way of theft or loss, the trains were required to be detained as a result of theft (sic) causing loss to the government and there was delay in making supplies to the public. It was further alleged that as many as 28 wagons were marked sick for repairs and were sent to Ajni workshop for repairs, for want of the required spare parts which were seized from the unlawful possession of the detenu. According to the order of detention, as a result the government and public indents of wagons totalling 792 could not be cleared for loading different commodities to be supplied in various parts of the country.

7. In case No. 3, a report had been received that the at a particular point between Buti Bori and Umrer section at some kms. near the railway crossing gate, 400 fish plates were stolen. The enquiry had revealed that the stolen property was unlawfully obtained and kept by the detenu at certain palce at Nagpur. A search warrant was obtained and 400 fish plates and carriage and wagon parts were recovered from the godown of the detenu. In the premises the detenu was arrested on December 14,

1984 and the aforesaid case i.e. third case was pending on the date of the order of detention. It was the case of the government that the due to the unlawful possession of the railway property by the detenu, as many as ten wagons had to be marked sick and could not be made available to the public and the government for loading different essential commodities to be supplied in different parts of the country in the month of December, 1984. As a result of this, as many 3224 indents put up by the government and the public for the supply of wagons could not be cleared due to the shortage of empty wagons.

8. The fourth case related to an offence under Section 379 IPC which was registered against the detenu under Sections 379, 411 and 34 IPC and was pending trial in Nagpur. In the complaint was to the effect that 128 CST-9 plates were stolen from five points between Kamptee and Kalmana Railway Line and these were valued at Rs. 4608. The property was loaded in truck bearing No. MHG 6302 owned by the detenu. The truck driver was arrested and the property was recovered from the godown of the detenu at the instance of the driver. The detenu was arrested in connection with this case on December 3, 1984, and the case was pending on the date of the issue of the detention order.

9. Regarding the fifth case it may be mentioned that an offence was alleged to have been committed by the detenu under Section 379 read with Section 34 IPC on the complaint of certain person who was working as a Manager of the Jamshetpur Transport Corporation, Nagpur. It was reported that three bundles of aluminium wire weighing about 500 kgs. valued at Rs. 1,60,000 were stolen by some unknown criminals on March 21, 1985. During investigation it is disclosed that the culprits belonged to the 'gang' of the detenu and that they had threatened the chowkidars on duty and forcibly removed the aluminium wire bundles. It was stated in the detention order that the detenu was the main brain behind this big daring robbery and he used his truck bearing No. MHG 6302 for transporting the stolen property. The detenu anticipating arrest moved the court and obtained anticipatory bail with a view to avoid arrest by the police. The case was pending investigation. It was further stated that the aluminium wire which was stolen was meant for the use of various public and government departments and due to aforesaid criminal activity as indicated above the supply of the wire could not be maintained as it was broken into pieces and made unserviceable.

10. In respect of the sixth case it was further alleged that on receiving information that 90 lbs. rails 31 meters long were received and kept unlawfully by the detenu in his godown at Nagpur, the inspector of the CBI and Railway Protection Force raided the godown on May 22, 1985 and seized 90 lbs. rails about 30 meters longs, break and some new steel sleepers and other materials. The stolen property was worth Rs. 20,000. The detenu was arrested in this case on May 22, 1985. The case was pending trial on the date of the issue of the detention order in Nagpur. It is the case of the detaining authority that due to this unlawful possession of break-locks by the detenu, four wagons were marked sick and had to be sent to the Railway Carriage and Wagon Workshop at Ajni for repair, as a result the indents put up to the Railway Administration by the public and the government to provided the empty wagons for supply of the different commodities in the different parts of the country could not be complied with.

11. In the backdrop of the aforesaid grounds it was further stated that the activities of the detenu were prejudicial to the maintenance of supplies and services essential to the community. It was further alleged that each of the grounds indicated above individually and collectively was not only germane but also sufficient to satisfy the detaining authority with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies and services essential to the community and as such it was necessary to detain him. It was further stated that the grounds were

communicated to the detenu under Section 8 of the aforesaid Act read with Article 22(5) of the Constitution of India upon which the detention order had been made. Copies of the documents mentioned in the said order which were placed before the detaining authority were enclosed with the detention order sent to the detenu. He was further informed that he had a right to make a representation to the State Government against the order of detention and would be afforded the earliest opportunity to make such a representation. He was further informed that the State Government would within three weeks from the date of detention of the detenu make a reference to and place the requisite material before the Advisory Board constituted under Section 9 of the said Act and asking them to make a report of detention within seven weeks. He was informed that he had a right to make the representation to the Advisory Board and if he wanted, he would be heard in person by the Advisory Board and in due course, if it found it necessary.

12. In this petition under Article 32 of the Constitution, it is the case of the petitioner on behalf of the detenu that the grounds of detention were vague, irrelevant and non-existent. It was further urged on behalf of the petitioners that the grounds of detention on which the detenu was detained related to as far back as 1979. It was not open to the detaining authority to order detention of the detenu on the said grounds. It was highlighted that in respect of alleged grounds, criminal cases were pending against the detenu and he had been enlarged on bail. It was submitted that when a judicial authority was satisfied on the materials placed before it that there were no grounds for keeping the detenu in detention, on the same materials the executive authority namely, the detaining authority could not substitute the judicial judgment and order detention to prevent the detenu from acting in a manner prejudicial to the interest of the community.

13. It was submitted by Mr Garg on behalf of the detenu that in this case in view of the fact that the detenu was on bail, the power of preventive detention was being used to defeat the provisions of the Code of Criminal Procedure and ordinary normal procedure. It was further the submission of Mr Garg that the alleged grounds were merely allegations of ordinary criminal cases which either had ended in acquittal or in respect of which appeals were pending or were pending determination and as such the formation of the belief by the detaining authority for the detention order was merely on surmises and on materials which the detaining authority was not competent to take note of. With reference to the various pending cases, it was submitted on behalf of the detenu that these criminal cases did not disclose any activity of the detenu prejudicial to the maintenance of supplies and services essential to the community. The connection of the detenu with the alleged offences was not there and such the satisfaction could not be there of the detaining authority. The detenu according to the petitioner, was in no manner connected with the alleged theft committed by certain named persons and though the ownership of the truck attributed to the detenu was not denied or disputed but the involvement of the detenu did not follow from that fact, it was submitted on behalf of the detenu.

14. It is further the case on behalf of the detenu and the submission of Mr Garg that it was not open to the detaining authority to use of allegations of the criminal cases of justify 'preventive detention'. It was further his submission that these did not establish proximate relation either with the maintenance of supplies or services essential to the life of the community nor did these involve any violation of relevant laws made by the Parliament dealing with the maintenance of supplies of essential commodities or maintenance of essential services. It is the case on behalf of the detenu that preventive detention is not substitute for detention under the ordinary criminal law. According to the petitioner, there was no allegation against the detenu of any violation of Essential Commodities Act or any provision of the Maintenance of Essential Services Act. The ground mentioned were cases of ordinary theft and should have been proceeded against under the ordinary law of crimes. The detenu

was released on bail. The connection of the detenu with the removal of fish plates for the supply of wagons was too remote to be any basis of satisfaction. In fourth case the detenu was on bail and detenu could not be kept under preventive detention in derogation of his liberty granted by bail by the appropriate judicial authority. Regarding the fifth case, the detenu had already been granted anticipatory bail. The order of the court could not be defeated by keeping the detenu in preventive detention, it was submitted by Mr Garg. It was urged that requisite satisfaction required under Section 3(2) of the said Act was not in fact formed and could not have been formed on the grounds alleged nor was there any rational connection for the formation of such satisfaction. The alleged incidents were denied and it was further submitted that if at all mere infractions of ordinary law could not fall in the category of public order or violation of any law indicated to the maintenance of supply or essential services. It was open to justify the order of detention even if one or more of the six grounds were found to be relevant. The documents, further, did not disclosed factual connection with the alleged offences. No statement of the witnesses had been supplied except one related in ground No. 5, it was urged in the petition.

15. It was further submitted that the provisions of Act 7 of 1980 being Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 could perhaps have application and in view of Explanation to Section 3(2) of the Act, the impugned order was bad. Our attention was drawn to the provisions of the said Act of 1980. Section 3(1) and (2) of the said Act reads as follows :

> 3. Power to make orders detaining certain persons. - (1) The Central Government or a State Government or any officer of the Central Government, nor below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation. - For the purposes this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means -

> (a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or
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> (b) dealing in any commodity -
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> (i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or
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> (ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely -

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed,

may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

16. In answer to the petition in the affidavit of the opposition filed on behalf of respondent, it was stated that the detenu Rampal Sahu was detained and a reference had been duly made under Section 10 of the said Act to the Advisory Board. The detenu was interviewed by the Advisory Board on January 29, 1986 and the Board had submitted its report under Section 12(1) of the said Act on February 3, 1986 which had been received by the Department on the same day. As such the report of the Advisory Board was received by the government within the stipulated period of seven weeks from the date of detention as required by the law.

17. The detenu had submitted his representation dated January 8, 1986 to the Advisory Board which was considered by the Board at the time of his interview before the Board on January 29, 1986. The said representation was received by the Home Department along with the report of the Advisory Board and was considered together with the report of the Advisory Board by government and the detention order was confirmed by the Government Order. All procedural safeguards of law were duly followed. There was no break of the same. It is not necessary to reiterate the affidavit in reply.

18. As has been mentioned hereinbefore, on the same facts, the petition under Article 226 had been filed in the High Court at Nagpur. The said application was dismissed by a Division Bench of the High Court on February 27, 1986. The petitioner has come up from the said decision which is the next matter being Special Leave Petition No. 1265 of 1986 and same will be disposed of by this judgment.

19. The High Court in its judgment referred to the grounds. It reiterated that permanent way material is essential to the maintenance of railway track and safety of the railway travelling public. After referring to the various grounds referred to hereinbefore, the High Court has noted that three points were urged before it on behalf of the detenu namely : (1) the order was mala fide, (2) there was total absence of material, and (3) in any event the provisions of the said Act were not attracted but the processions of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 being Act 7 of 1980 would be attracted. The High Court referred to the affidavits of the Commissioner of Police who passed the detention order which was filed in the High Court and found that there were good grounds for detention and it was not possible to hold that there were no grounds of detention relevant for the Act.

20. The High Court referred to the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as mentioned in Explanation to Section 3 of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980. The High Court was of the view that it was clear that only National Security Act was attracted in the facts and circumstances of this case.

21. In view of the Explanation to Section 3 of Act 7 of 1980, it appears "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" has certain particular connotation. But in the instant case the Act under consideration, the conduct of the detenu

was prejudicial to the maintenance of supplies and services essential to the community in general as contemplated by Section 3(2) and not in any particular mode contemplated by Explanation Section 3(1) of Act 7 of 1980 and as such is not excluded by the Explanation to sub-section (2) of Section 3 of the Act. In the premises we are therefore of the opinion that the High Court was right in the view it took on this aspect of the matter. We are also of the opinion that for the same reason, the same contentions urged before us in support of the writ petition cannot be sustained.

22. As mentioned hereinbefore, before the High Court also the insertion of Section 5-A of the Act by the National Security (Second Amendment) Act, 1984 was challenged under which even the existence of one ground is sufficient. Before us no ground was canvassed about the validity of the said amendment and inclusion of Section 55-A of the Act.

23. It must therefore be held that even the existence of one ground was sufficient to sustain the detention order.

24. Mr Garg drew our attention to certain observations of Chagla, C.J., in Full Bench decision of the High Court of Bombay in Maledath Bharathan Malyali v. Commr. of Police [AIR 1950 Bom 202 : 52 Bom LR 268 : 51 Cri LJ 1126]. That was a case under the Bombay Public Security Measure Act being Act No. 6 of 1947. There was an order of detention under Section 2(A-1) of the Act for the collateral purpose. It was held that when the detaining authority had made up his mind to detain a person who was alleged to have committed an offence, then, the detaining authority had made his choice and it would not be permissible, according to that decision, for him to investigate the offence while still keeping the person under detention and not complying with the provisions of the law with raged to investigation. If the purpose of detaining a person was a collateral purpose i.e. to deprive him of his rights and safeguards under the Criminal Procedure Code and to carry on an investigation without the supervision of the court the detention was mala fide and could not be justified. Chagla, C.J. at page 203 speaking for the Full Bench observed that an order of detention under the Security Act could only be justified in a court of law provided it was made bona fide; an order of detention could not be made for an ulterior motive or for a collateral purpose. The detaining authority, it was further observed, must only consider the objects for which the Act was passed and the only consideration which must weigh with the detaining authority was public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay. If in making the order his mind was influenced by any consideration extraneous to the Act, then the order would be bad and could not be upheld. The question that the court had to consider in that case was weather in making the order the Commissioner of Police was influenced by any collateral purpose and whether any extraneous factor had weighed on his mind when he made the order. When we speak of an order being made mala fide, it did not mean that the court attributed to the detaining authority any improper motive.

25. An order is mala fide when there is malice in law although there is no malice in fact. The malice in law is to be inferred when an order is made contrary to the objects and purposes of the Act. Whether in any particular case this is so or not must depend upon the facts and circumstances of the case. The fact that the person sought to be detained is in fact under detention is a relevant and material factor but the allegations or the incidents leading to his detention have also to be borne in mind and corelated to the object of a particular Act under which preventive detention is contemplated. In the instant case, the Act was the National Security Act, 1980. It was an Act to provide for preventive detention in certain cases and for matters connected therewith. Power has been given under Section 3 authorising preventive detention of any person from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers and of the

security of India. Sub-section (2) of Section 3 provides that the Central Government or the State Government might, if satisfied with respect to any person that with a view preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it was necessary so to do, make an order directing that such person be detained then the same can be done. The Explanation to this sub-section makes it clear that the expression "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, as we have noted before.

26. Our attention was drawn to several authorities where this Act has been considered.

27. In a recent decision of this Court [(1985 4 SCC 232 : 1985 SCC (Cri) 514], one of us (Ranganath Misra, J.) had to consider the effect of passing order for preventive detention where the detenu was in jail.

28. In Ramesh Yadav v. District Magistrate, Etah [(1985 4 SCC 232 : 1985 SCC (Cri) 514] it was held that merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail, an order of detention under the National Security Act should not ordinarily be passed. If the apprehension of the detaining authority was true, Court observed, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. We respectfully agree with this conclusion. But this principle will have to be judged and applied in the facts and circumstances of each case. Where a person accused of certain offences whereunder he is undergoing trial or has been acquitted, the appeal is pending and in respect of which he may be granted bail may not in all circumstances entitle an authority to direct preventive detention and the principle enunciated by the aforesaid decision must apply but where the offences in respect of which the detenu is accused are so interlinked and continues in character and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention. Merugu Satyanarayana v. State of A.P. [(1983) 1 SCR 635 : (1982) 3 SCC 301 : 1983 SCC (Cri) 18 : AIR 1982 SC 1543] was a case dealing with an order under Section 3(2) of the Act. There this Court found that the affidavit in opposition supporting the reply to the show cause notice was not from the person who passed the detention order. There the affidavit was of a sub-inspector of police at whose instance the arrest was made and could not therefore satisfy the constitutional mandate that will be treated as non est. In the instant case before us a point was made that the counter was made by a desk clerk of the Home Department in writ petition. This would have been a fatal defect and the government's view could not have been considered but there was an application under Article 226 of the Constitution before the High Court challenging the identical detention order on the same grounds. Before the High Court Shri Malhotra and Shri S.K. Seth who were the Commissioners of Police had filed two separate affidavits upholding the issue of the detention order and explaining the grounds and the reasons for the same. If those affidavits are taken into consideration, as these must be - then there is no substance in this ground. In the aforesaid case assurance was given before this Court in an earlier case that preventive detention would not be resorted to against political opponents. In the said decision the facts were entirely different. That was a case affecting the liberty of a subject on political consideration.

29. For maintaining supplies throughout the country the railways was per se essential, and, therefore, interference with railway lines would be endangering the maintenance of supplies - see the observations of this Court in Mohd. Subrati alias Mohd. Karim v. State of W.B. [(1973) 2 SCR 990, 991-92 : (1973 3 SCC 250, 252-53 : 1973 SCC (Cri) 245, 247-48 : AIR 1973 SC 207, 208].

30. This Court in Rameshwar Shaw v. District Magistrate, Burdwan [(1964) 4 SCR 921 : AIR 1964 SC 334 : 1964 (1) Cri LJ 257] had to deal with preventive detention of a person who was in jail custody. There the petitioner was detained by an order of the District Magistrate under the provisions of the Preventive Detention Act, 1950. The order recited that the District Magistrate was satisfied that it was necessary to detain the petitioner with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. This order was served on the petitioner on February 15, 1963, while he was in jail custody as an undertrial prisoner in connection with a criminal case pending against him.

31. It was urged on behalf of the petitioner in that case that the detention of the petitioner was not justified by the provisions of Section 3(1) of the Preventive Detention Act, 1950. It was noted by Justice Gajendragadkar at page 925 of the report speaking for the Court that the basis of the order of detention which the authority was empowered to pass against a person under Section 3(1)(a) was that if the said order was not passed against him, he might act in a prejudicial manner. In other words, the authority considered the material brought before in respect of the person, examined the said material and reached the conclusion that the material showed that the said person might indulge in prejudicial activities if he was not prevented from doing so by an order of detention. The Court then posed the question how could the authority come to the conclusion that the person who was in jail custody might act in a prejudicial manner unless he was detained. The learned judge was of the view that the scheme of the section postulated that if an order of detention was not passed against a person, he would be free and able to act in a prejudicial manner. In other words, at the time when the order of detention was brought into force, the person sought to be detained might have freedom of action. That alone would justify the requirement of the section that the order of detention was passed in order to prevent a prejudicial conduct, of the person which took place in that case ten years before the date of detention and nothing was known against the person indicating i.e. the tendency to act in a prejudicial manner. Even if it was ten years old, the authority was satisfied that detention was necessary. The Court also noted that the past conduct of antecedent history on which the authority purported to act should ordinarily be proximate in point of time and have a rational connection with the conclusion that the detention of the person was necessary. The Court, however, further held that as an abstract proposition of law, there might not be any doubt that Section 3(1)(a) of the said Act did not preclude the authority from passing an order of detention against a person while he was in detention or in jail. But the relevant facts in connection with the making of the order might be different and that might make a difference in the application of the principle that the order of detention could be passed against a person in jail. The Court, however, was reluctant to lay down any inflexible test. In that case the petitioner was ordered to be released on the ground that he was served with the order of detention wile he was in jail custody. In the instant case before us, petitioner is not in jail custody.

32. In Makhan Singh Tarsikka v. State of Punjab [(1964) 4 SCR 932 : AIR 1964 SC 1120 : 1964 (2) Cri LJ 217], the Court was concerned more or less with the same facts. The Court observed at page 937 of the report that the aspect of the matter which was emphasised in the case of Rameshwar Shaw [(1964) 4 SCR 921 : AIR 1964 SC 334 : 1964 (1) Cri LJ 257] was the relevance of considerations of proximity of time and concluded that whether an order of detention could be passed against a person who was in detention or jail would always have to be considered in the facts

and circumstances of each case. The order of detention in that case was also set aside in view of the facts mentioned therein.

33. In Golam Hussain alias Gama v. Commr. of Police [(1974) 3 SCR 613 : (1974) 4 SCC 530 : 1974 SCC (Cri) 566 : AIR 1974 SC 1336], the question arose under Section 3(1) and 3(2) of the Maintenance of Internal Security Act, 1971. There pursuant to an order under Section 3(1)(a)(ii) read with Section 3(2) of the said Act the petitioner in that case was arrested for hurling soda water bottles, brick-bats and bombs indiscriminately on a group of persons on different dates. The order of detention said that if left free and unfettered the petitioner was likely to continue to disturb maintenance of public order by acting in similar manner. In an earlier criminal case the petitioner by was discharged since no witness deposed against him in open court. Thereafter the petitioner was detained under the Act. In a petition under Article 32 of the Constitution, it was contended that the detention was mala fide because it was after his discharge by the court for want of evidence and secondly, there had been a long interval of nine months between the criminal incidents and the detention order, thirdly the order of detention which did not specify a period as was violative of Section 12 of the said Act and lastly the detention was founded on prevention of public disorder wile the acts imputed to the petitioner were aimed at a particular person, not the general public.

34. It was held that merely because the detaining authority had chosen to base the order of detention on the discharge of the petitioner by court for want of evidence it could not be held that the order was bad in law. This branch of jurisprudence, as interpreted by this Court, has made it futile for a detenu to urge that because the grounds of detention had been the subject matter of criminal cases which had ended in discharge, therefore, the order of detention was mala fide. The basic imperative of proof beyond reasonable doubt did not apply to the component of subjective satisfaction for imprisonment for reasons of internal security. There might be extreme cases where the court had held a criminal case to be false and the detaining authority for want of evidence claimed to be satisfied about prospective prejudicial activities based on what a court had found to be baseless. In the present case the order of discharge was made purely for want of evidence on the scope that witnesses were too afraid to depose against a desparate character, cannot come under the exceptions carved out by the court to this category. It was further emphasised that there must be a live link between the grounds of criminal activities alleged by the detaining authority and the purpose of detention. This credible chain is snapped if there was too long and unexplained interval between the offending acts and order of detention. If the detaining authority took the chance of conviction and, when the court verdict went against it, fell back on its detention power to punish one whom the court would not convict, it was an abuse an virtual nullification of the judicial process. But if honestly, finding a dangerous person getting away with it by overawing witnesses or concealing the commission cleverly, an authority though on the material before it that there was need to interdict public disorder at his instance he might validly direct detention. In the present case, the acts were serious, being bomb hurling and brick-bat throwing in public places creating panic. Involvement of the petitioner was discovered only during the investigation. It was further held that the argument that detention without defined duration is ipso jure invalid could not be sustained. No responsible government should or would be unresponsive to the claim of citizen's freedom. The nature of the act from the circumstances of its commission, the impact on the people around and such factors constitute the pathology of public disorder. These acts could not be isolated from their public setting nor was it possible to analyse its molecules as in a laboratory but to take its total effect on the flow of orderly life. It might be question of degree and quality of activity of the sensitivity of the question involving people. To dissect further is to defeat the purpose of social defence which is the paramount purpose of the preventive detention.

35. If, however, a detention order is mala fide then the same is bad. Reliance was made for this proposition on the decision of this Court in Sahib Singh Dugal v. Union of India [(1966) 1 SCR 313 : AIR 1966 SC 340 : 1966 Cri LJ 305].

36. Mohd. Salim Khan v. C.C. Bose [(1972) 2 SCC 607 : 1973 SCC (Cri) 35] depended upon the particular facts of that case, so is the position with Borjahan Gorey v. State of W.B. [(1972) 2 SCC 550 : 1972 SCC (Cri) 888] to which our attention was drawn, where it was highlighted that judicial trial for punishing the accused for the commission of an offence was a jurisdiction distinct from that of detention under the Act which had in view the object of preventing the detenu from acting prejudicial to the security of the State and maintenance of public order. The fields of these two jurisdictions were not co-extensive nor were they alternatives. It must be remembered that the grounds of detention related to past acts on which in opinion as to be the likelihood of the repetition of such or similar acts could be based.

37. It was submitted that in order to invoke the provisions of these Acts for securing preventive detention under the National Security Act, there must be something imminent. In Godavari Shamrao Parulekar v. State of Maharashtra [(1964) 6 SCR 446 : AIR 1964 SC 1128 (2) Cri LJ 222] where referring to several authorities Wanchoo, J. speaking for the Court observed at page 452 of the report that in those cases it was held by this Court that where a person was detained in jail as an undertrial prisoner no order of detained either under the Preventive Detention Act or under the Rules could be served on him because one of the necessary ingredients which go to make up the satisfaction of the detaining authority is necessarily absent in such a case. It was pointed out in Rameshwar Shaw case [(1964) 4 SCR 921 : AIR 1964 SC 334 : 1964 (1) Cri LJ 257] that before an authority can legitimately come to the conclusion that the detention of the person was necessary to prevent him from acting in a prejudicial manner, the authority had to be satisfied that if the person was not detained, he would act in a prejudicial manner and that inevitably postulated freedom of action to the said person at the relevant time. The Court noted two types of cases. Those two cases were concerned with the service of an order of detention under the Preventive Detention Act or under the Rules on a person who was in jail in one of two circumstances namely - where he was in jail as an undertrial prisoner and the period for which he was in jail was indeterminate or where he was in jail as a convicted person and the period of his sentence had still to run for some length of time. In those cases the service of the order of detention under the Preventive Detention Act or under the Rules in jail would not be legal for one of the necessary ingredients about which the authority had to be satisfied would be absent, namely, that it was necessary to detain the person concerned which could only be postulated of a person who was not already in prison. But in other types of cases this Court had to deal with G.S. Parulekar case [(1964) 6 SCR 446 : AIR 1964 SC 1128 (2) Cri LJ 222]. The appellants were not under detention either as undertrial prisoners for an indeterminate time or as convicted persons whose sentences were still to run for some length of time. They were detained under the Preventive Detention Act by an order dated November 7, 1962 which had been reported to government for approval and which order could only remain in force 12 days under Section 3(3) of the said Act unless in the meantime it had been approved by the State Government. In those cases the principles of the decision referred to in Rameshwar Shaw case [(1964) 4 SCR 921 : AIR 1964 SC 334 : 1964 (1) Cri LJ 257] and other cases could not be applied.

38. If there was an imminent possibility of the man being set at liberty and his detention coming to an end, then it appears, as a principle, if his detention is otherwise necessary and justified then there is nothing to prevent the appropriate authorities from being satisfied about the necessity of passing an appropriate order detaining the person concerned.

39. In Gopi Ram v. State of Rajasthan [AIR 1967 SC 241 : 1967 Cri LJ 279], Mudholkar, J. reiterated the principle that law does not permit double detention and referring to Rameshwar Shaw case [(1964) 4 SCR 921 : AIR 1964 SC 334 : 1964 (1) Cri LJ 257] it was reiterated that when a person was in jail custody and the criminal proceedings were pending against him, the appropriate authority might in a given case taken the view that criminal proceedings might end very soon and might terminate in his acquittal. In such a case, it would be open to the appropriate authority to make an order of detention, if the requisite conditions of the rule or the section were satisfied, and served it on the person concerned even after he was acquitted in the said criminal proceedings.

40. Masood Alam v. Union of India [(1973) 1 SCC 551 : 1973 SCC (Cri) 435] was a case where it was held that if the grounds were relevant and germane to the object of the detaining Act then merely because the objectionable activities covered thereby also attracted the provisions of Chapter VIII, Criminal Procedure Code, the preventive detention could not for that reason was satisfied of the necessity of the detention as contemplated by the Act. The jurisdiction of preventive detention sometimes described as jurisdiction of suspicion depend on subjective satisfaction of the detaining authority. If the detaining authority was of opinion on grounds which were germane and relevant, that it was necessary to detain a person from acting prejudicial as contemplated by Section 3 of the Act then it was not for this Court to consider objectively how imminent was the likelihood of the detenu indulging in those activities. There was no legal bar in serving an order of detention on a person who was in jail custody if he was likely to be released soon thereafter and there was relevant material on which the detaining authority was satisfied that if free, the person concerned was likely to indulge in activities prejudicial to the security of the State or maintenance of public order. The Court stressed upon the fact that it was always the past conduct, activities or the antecedent history of a person which the detaining authority took into account in making a detention order. No doubt the past conduct, activities or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person was necessary but it was for the detaining authority who had to arrive at a subjective satisfaction in considering the past activities and coming to his conclusion if on the basis of those activities he was to be satisfied that the activities of the person concerned were such that he was likely to indulge in prejudicial activities necessitating his detention. Where an earlier order of detention was either revoked door had expired, any subsequent detention order could be passed only on fresh facts arising after the expiry or revocation of the earlier order.

41. Golam Hussain alias Gama v. Commr. of Police [(1974) 3 SCR 613 : (1974) 4 SCC 530 : 1974 SCC (Cri) 566 : AIR 1974 SC 1336] highlights the need for causal connection between the grounds and the action proposed. The jurisprudence dealing with prohibitory detection or preventive detention is well settled and it can no longer be a valid contention that because the accused had been discharged in a criminal case, the ground of charge could not be relied upon by the appropriate authority passing an order of preventive detention. The former related to the punitive branch of criminal law and relied on the past commissions, the latter to the preventive branch of social defence and protected the community from future injury. It is not possible to urge that simply because a man has been discharged in a criminal case, those grounds could not be grounds for preventive detention. But there must be live link between the grounds of criminal activities alleged by the detaining authority and the purpose of detention. This credible chain would be snapped if there was too long and unexplained an interval between the offending acts and the order of detention. There must be proximity, but no mechanical the of counting months of interval can be laid down - it depends on the nature of the acts alleged or relied, gravity of the situation and the reason for the delay. It is in that background only it can be said that causal connection is broken. The power to detain and the right to liberty must be harmoniously balanced in the larger interest of

the community.

42. Dulal Roy v. State Magistrate, Burdwan [(1975) 1 SCC 837 : 1975 SCC (Cri) 329] stressed that the scheme of Section 3(1)(a) of the Maintenance of Internal Security Act, 1971 presupposed that on the date of the order of detention or in the near future the person sought to be detained had or would have freedom of action. If a person therefore was serving a long term of imprisonment or was in jail custody as an under trial and there was no immediate or early prospect of his being released on bail or otherwise, the authority could not legitimately be satisfied on the basis of his past history or antecedents that he was likely to indulge in similar prejudicial activities after his release in the distant or indefinite future. To the similar effect are the observations in Ramakrishna Rawat v. District Magistrate, Jabalpur [(1975) 4 SCC 164, 167 and 169 : 1975 SCC (Cri) 457].

43. Mere service of detention order in jail is not bad.

44. In Vijay Narain Singh v. State of Bihar [(1984) 3 SCR 4 35 : (1984) 3 SCC 14 : 1984 SCC (Cri) 361 : AIR 1984 SC 1334] it was highlighted by two learned Judges (O. Chinnappa Reddy and E.S. Venkataramiah, JJ.) of the three judges Bench consisting of O. Chinnappa Reddy, A.P. Sen and E.S. Venkataramiah, JJ. that the law of preventive detention was a hard law and therefore should be strictly construed. Care should be taken that the liberty of the person was not jeopardized unless the case fell squarely within the four corners of the relevant law. The law of preventive detention was not to be used merely to clip the wings of the accused who was involved in a criminal prosecution. Where a person was enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which was treated on the very same charge which was to be tried by the criminal court. The Court was considering the expression 'habitual offender' under the Bihar Control of Crimes Act, 1981.

45. Assuming the facts alleged to be right and there is a causal connection between the facts alleged and the purpose of detention and the formation of the opinion is not mala fide, then the sufficiency of the grounds and the truth of the grounds is not germane. See the observations of this Court in Barium Chemicals Ltd. v. Company Law Board [1966 Supp SCR 311, 354 and 363 : AIR 1967 SC 295].

46. It has to be borne in mind that having regard to the purpose of the Act, detaining authority must take into consideration rational grounds and that should be the basis for the horoscope for the future so as to determine whether the person proposed to be detained comes within the mischief of the Act. If the person is in detention or is under trial and his conviction is unlikely but his conduct comes within the mischief of the Act then the authority is entitled to take a rational view of the matter. The grounds must be there. The decision must be bona fide.

47. In Prakash Chandra Mehta v. Commr. and Secretary, Government of Kerala [1985 Supp SCC 144 : 1985 SCC (Cri) 332] it was noted that preventive detention unlike punitive detention which was to punish for the wrong done, was to protect the society by preventing wrong being done. Though such powers under those Acts must be very cautiously exercised as not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards are to ensure that yet these must be looked at from a pragmatic and commonsense point of view. An understanding between those who exercised powers and the people over whom or in respect of whom such power is exercised is necessary. The purpose of exercise of all such powers by the Government must be to promote common well-being and must be to subserve the common good. It is necessary to protect therefore the individual rights insofar as practicable which are not inconsistent with the security and

well-being of the society. Observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.

48. In Shiv Ratan Makim s/o Nandlal Makim v. Union of India [(1986) 1 SCC 404 : 1986 SCC (Cri) 74] it was stressed that the jurisdiction to make orders for preventive detention was different from that of judicial trial in courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would not operate as a bar to a detention order or render it mala fide. A fortiori therefore the mere factor that a criminal prosecution can be instituted cannot operate as a bar against the making of an order of detention. If an order of detention is mad only in order to bypass a criminal prosecution which may be irksome because of the inconvenience of proving guilt in a court of law, it would certainly be an abuse of the power of preventive detention and the order of detention would be bad. But if the object of making the order of detention was to prevent the commission in future of activities injuries to the community, it would be a perfectly legitimate exercise of power to make the order of detention. The court would have to consider all the facts and circumstances of the case in order to determine on which side of the line the order of detention falls.

49. In view of the aforesaid principle that emerged, it is necessary to consider the grounds and determine whether there are causal connections. The facts that a man is not in jail per se would not be determinative of the factor that order of preventive detention could not be passed against him. The fact that a man was found not guilty in a criminal trial would not also be determinative of the factors alleged therein. All these facts must be objectively considered and if there are causal connections and if bona find belief was formed then there was nothing to prevent rom serving an order of preventive detention even against a person who was in jail custody if there is imminent possibility of his being released and set at liberty if the detaining authority was duly satisfied.

50. Before us no substantial point was made of infraction of any procedural safeguard engrafted in the Act. The documents relied on were duly supplied. We have examined that question from the records and materials available before us. Proper opportunity to make a representation was given and the representation made to the Advisory Board was duly considered by the Advisory Board. Their recommendations were also duly considered by the State Government. In the premises there is no substance in the grievance that the procedural safeguards had not been followed. It further appears to us that there was rational subjective satisfaction arrived at bona fide on the basis of the materials available to the detaining authority and the materials had rational nexus with the purpose and object of the detention as contemplated by the Act.

51. Judged by the standards laid down by various decisions mentioned hereinbefore and in view of the fact that procedural safeguards had been observed, we are of the opinion that there is no substance in the challenge made in the writ petition. We are further of the opinion that the High Court was right in dismissing the writ petition before it. Special leave application from the said decision therefore must fail and the writ petition filed in this Court also fails for the reasons indicated before.

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