Abdul Razak Abdul Wahab Sheikh

Vs

S. N. Sinha, Commissioner of Police, Ahmedabad and Another

Writ Petition (Criminal) No. 307 of 1988

(B. C. Ray, S. R. Pandian JJ)

03.03.1989

JUDGMENT

RAY, J. –

1. The petitioner who is the brother of detenu, Abdul Latif Abdul Wahab Sheikh of Ahmedabad has challenged in this writ petition the order of detention dated May 23, 1988 passed by respondent 1, the Commissioner of Police, Ahmedabad City, Gujarat issued under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 and served on the detenu while the detenu was in custody at Sabarmati Central Prison under a judicial order of remand made by the Designated Court, Ahmedabad in respect of C.R. No. 40 of 1987, on the grounds inter alia that there has been absolute non-application of mind on the part of the detaining authority in clamping the order of detention and also on other grounds.

2. In order to decide the various contentions raised in this writ petition, it is necessary to consider the background as well as the various orders of detention passed against the detenu by the detaining authority, respondent 1. On September 11, 1984, the detenu was served with a show-cause notice under Section 59 of the Bombay Police Act, 1951 calling upon him to show cause as to why he should not be externed from the limits of Ahmedabad City Police Commissioner's jurisdiction and its surrounding areas as also from the rural areas of Gandhinagar, Kheda and Mehsana District limits for the activities of February 1983. In 1985 the detenu was arrested for alleged offences under Sections 307, 143, 147, 148, 149 and 324 of Indian Penal Code in C.R. No. 37 of 1985. On February 14, 1985 the detenu was granted bail in the said case by the Sessions Court, Ahmedabad. On March 18, 1985 communal riots broke out in Ahmedabad city and on March 24, 1985 an order of detention under the National Security Act was passed against the detenu by respondent 1. During the communal riots one Police Sub-Inspector. Mr. Rana was killed in Kalupur P.S. FIR was lodged against the detenu and six other accused on May 9, 1985. In the FIR the detenu was named as accused 2. On July 6, 1985 chargesheet was submitted in C.R. No. 37 of 1985. On September 27, 1985 enquiry was completed in externment proceedings and arguments were heard. On November 12, 1985, the detenu surrendered to police and he was arrested and taken into custody. In the said case accused 6 and 7 were discharged, the detenu along with accused 4 was tried in the said charge by the Principal Judge, Sessions Court who by his judgment dated May 26, 1986 acquitted the detenu and the co-accused after recording of the evidence of witnesses and considering the same. The detenu was, however, enlarged on bail by the Magistrate in the said case vide his order dated June 23, 1986 as no case was made out against the detenu under Section 307 IPC and the offence, if any, was only under Section 324, IPC. The detenu was released from jail on June 23, 1986 and immediately as he came out, an order of detention under the Prevention of Anti-Social Activities Act (PASA) was served on the detenu there and then and he was once again taken into custody. It is

relevant to mention in this connection that on January 18, 1986 the order of externment of the detenu from Ahmedabad city and rural areas of Gandhinagar etc. was made while he was in custody. The detenu preferred an appeal against the externment order which was heard by the Deputy Secretary (Home). The State Government confirmed the order of externment on June 23, 1986. On August 7, 1986, the State Government revoked the order of detention dated June 23, 1986 on the ground that no Advisory Board was constituted. On the same day, however, the State Government passed the second order of detention under PASA and the same was served on the detenu on the same day. The detenu filed a Special Criminal Application No. 862 of 1986 challenging the externment order dated January 18, 1986 and its confirmation order dated June 23, 1986 before the High Court of Gujarat. The detenu also filed another Special Criminal Application No. 889 of 1986 before the High Court challenging the second order of detention dated August 7, 1986. The Special Criminal Application No. 889 of 1986 was dismissed by the High Court on October 21, 1986. Against this judgment the detenu filed a Special Leave Petition (Cri) No. 3762 of 1986 before this Court and the said petition was finally heard in part on January 23, 1987 and it was adjourned to February 3, 1987. This Court released the detenu on parole only on January 23, 1987 for the reason that the detenu was required to be in Ahmedabad because the Corporation elections were to take place on January 25, 1987. Unfortunately, the mother of the detenu expired on January 23, 1987, but in spite of the order of parole made by this Court, the State Government permitted the detenu to attend his mother's funeral by granting him parole for only four hours and after the funeral, the detenu was again taken into custody. Thereafter, the detenu was released on parole on January 24, 1987. The elections for the Corporation were held on January 25, 1987 and the detenu was declared elected from all the wards from which he had contested.

3. On February 3, 1987, the appeal of the detenu was heard finally by this Court and this Court extended the parole granted to him till the judgment was delivered in the case. However, on February 3, 1987 in spite of the orders of parole, the detenu was kept in custody and was released only on the next day i.e. February 4, 1987. This Court by its judgment dated February 9, 1987 (Abdul Latif Abdul Wahab Sheikh v. B. K. Jha, (1987) 2 SCC 22 : 1987 SCC (Cri) 244) quashed the detention order and directed the respondents to set the detenu at liberty forthwith.

4. The detenu in terms of his earlier bail orders was required to be present before Kalupur P.S. every morning at 11 a.m. and he continued to do so from February 9 to February 14, 1987. On February 14, 1987 when the detenu reported at Kalupur P. S. along with his advocate to record his presence, he was asked to wait there. At about 12.30 p.m., he was informed that he was taken into custody for breach of orders of externment dated January 18, 1986. The FIR against this case was registered and the detenu was produced before the Metropolitan Magistrate at about 1.30 p.m. The Metropolitan Magistrate granted bail to the detenu. At that time the detenu received the news that disturbances had broken out in the city of Ahmedabad and, therefore, he declined to avail of the bail order and requested the Magistrate to take him into custody. On February 15, 1987, the order of detention under Section 8(a) of the National Security Act was passed against the detenu by the Commissioner of Police, Ahmedabad City. The detenu was served with the order which was confirmed by the State Government on February 18, 1987. This order of detention was challenged by the detenu by a writ petition under Article 32 of the Constitution of India before this Court being Writ Petition (Cri.) No. 246 of 1987. This Court issued rule returnable to April 4, 1987. Pending disposal of the writ petition, the detenu was released on April 3, 1987 by the Advisory Board constituted under the National Security Act. Furthermore, to harass the detenu two FIRs being C.R. Nos. 34 and 40 of 1987 were lodged against the detenu in Kalupur P.S. On June 22, 1987 the detenu on receiving notices of two meetings, one of the General Body and the other of Suez Refugee Committee of the Ahmedabad Municipal Corporation to be held on June 26, and June 23, 1987 respectively, made an

application to the Home Secretary, Government of Gujarat seeking permission to visit Ahmedabad for one month. As no reply was received by the detenu, the detenu moved Cri. Misc. Petition No. 1345 of 1987 before the High Court for permission to visit Ahmedabad. The aforesaid miscellaneous applications were rejected by the High Court. Thereafter, the detenu filed Special Leave Petition (Cri) No. 1952 of 1987 before this Court against the impugned order of externment of the detenu for a period of two years with effect from January 18, 1986. Notice was issued on the said petition but as the period of externment expired, the said petition was finally disposed of by this Court.

5. On October 16, 1987, the detenu was arrested by the police for an alleged offence committed by the detenu in respect of the incident of February 14, 1987 i.e. breach of externment order dated January 18, 1986. The detenu applied for bail to the Designated Court, Ahmedabad but the bail application was rejected vide order dated November 24, 1987. The detenu filed an appeal before this Court under Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1985. This appeal being Criminal Appeal No. 316 of 1988 was disposed of by this Court on April 27, 1988 setting aside the impugned order of the Designated Court rejecting application for bail and remitting the case to the Designated Court for a decision afresh. The Designated Court was also directed to enlarge the applicant on bail on such terms as it deems fit pending disposal of the application for bail on merits. The respondents being afraid that this Court may allow the said Criminal Appeal No. 316 of 1987 made another order of detention on January 25, 1988 and served the order on the detenu on the same day. This detention order was made under Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985. This order of detention was challenged by Criminal Writ Petition No. 114 of 1988 before this Court. Rule was issued and the petition was heard on merits. The detention order was withdrawn as the Advisory Board refused to confirm the order of detention. The detenu was released on March 14, 1988. The detenu accordingly went home. However, when Criminal Appeal No. 316 of 1988 came up for hearing before this Court on April 7, 1988 an allegation was made that detenu had absconded. This Court however, ordered on April 7, 1988 that the detenu should surrender within a week. In compliance of the said order the detenu surrendered on April 13, 1988 and on May 23, 1988 the order of detention was made as stated hereinbefore.

6. It has been stated in the writ petition that in the grounds of detention in support of the present order of detention dated May 23, 1988, no act on the part of the detenu is alleged between March 14, 1988 and April 13, 1988. It has also been stated that it was the only period of less than a month during which the detenu was a free man. After April 13, 1988 the detenu has been continuously in custody and prior to March 14, 1988 also the detenu was continuously in custody for nearly three years save for short periods during which he was released on parole by this Court. No prejudicial act has been alleged against the detenu during the days when the detenu was out on parole.

7. It has been further stated that no prejudicial activity of any kind is alleged against the detenu after March 14, 1988 being the date on which the earlier order of detention stood revoked by virtue of the Advisory Board's decision. The action of respondents is plainly vindictive in total defiance of law and disgraceful blot on any civilised administration of justice. It has also been stated that there has been no application of mind at all to the most glaring fact that the Designated Court in defiance of this Court's order did not grant interim bail to the detenu by its order dated May 13, 1988. There was no possibility therefore, of the detenu being released on bail. It is impossible to justify the statement made in the grounds of detention that there are full possibilities that the detenu may be released on bail in this case. This statement, it has been stated is recklessly false. It has also been stated that the entire material which forms the basis of the present order of detention and the grounds of detention was available at the time of the detention order of January 25, 1988.

8. The detaining authority, respondent 1 has filed an affidavit in reply. In para 16 of the said affidavit it has been stated that it is true that the detenu was released by the Advisory Board on April 3, 1987; but it is not true to say that two FIRs were lodged against the detenu with a view to harass him. These two FIRs i.e. C.R. Nos. 34 and 40 of 1987 were registered against the detenu on February 14, 1987 at P.S. Kalupur i.e. prior to the order dated April 3, 1987 passed by the State Government. C.R. No. 34 of 1987 was registered at P.S. Kalupur against the detenu for breach of externment order while C.R. No. 40 of 1987 was registered against the detenu at P.S. Kalupur for an offence of provocative speech made by the detenu.

9. In para 32, respondent 1 merely denied the averments made in para 3(III) of the petition wherein it was specifically averred that there was no specific material for passing the detention order against the detenu. In para 34, respondent 1 has denied the statement that there is no application of mind to the facts of the case stated in the petition. It has also been stated that the statement that there is no material to justify the action taken by the competent authority is not true.

10. It appears from the grounds of detention which was served under Section 9 of the said Act that three criminal cases have been mentioned. These are :

> #1. P.S. Kalupur Case Under Section 25(a)(c) of Arms Pending in No. 372 of 1985 Act, Sections 4, 5 of court Explosives Act.2. P.S. Kalupur Case Under Section 120(b) of IPC Pending for No. 456 of 1987 under Section 25(1)(e) and examination (c) of Arms Act and under Section 3(1) of the Terrorists Act, 1985.3. P.S. Kalupur Case Under Sections 307, 120(b) Pending for No. 2 of 1988 of IPC under Section 3(1) examination of Terrorists Act, under Sections 4, 5 of Explosives Act, under Section 25(1)(c)(1) of Arms Act and under Section 135(1) of Bombay Police Act.##

11. It has also been stated therein that after careful consideration of the facts of the complaint of the aforesaid offences it is apprehended that detenu's criminal activities will adversely affect the public order because the activities, the weapons kept by the detenu and his associates cannot except create terror in the State of Gujarat.

12. It has been further stated that :

> You are arrested for committing the said offences, even though you are released on bail from the court. At present you are in jail in the case registered in Kalupur Police Station offence register No. 40/87 and there are full possibilities that you may be released on bail in this offence also.

13. Out of these cases in respect of Case No. 2 of 1988 which was registered on January 2, 1988 the name of the detenu is not mentioned in the FIR. In Case No. 372 of 1985 also which was registered on June 26, 1985, the name of the detenu is not in the FIR. The detenu, however, was arrested on October 17, 1987 i.e. after a lapse of more than two years and three months. In Case No. 456 of 1987 which was registered on October 16, 1987, the detenu was arrested on October 16, 1987. This case related to the seizure of a revolver from the person of the detenu who kept the same without any licence in violation of the provisions of Arms Act. The detaining authority while issuing the order of detention against the detenu, the brother of the petitioner who is already in custody, did not at all consider the fact that the Designated Court declined to grant bail to the detenu by its order dated May 13, 1988 in Cri. Misc. No. 511 of 1988. The detaining authority also was not aware that no application for bail on behalf of the detenu was filed between May 13 to May 23, 1988 i.e. the

date when the detention order was made. Had this fact been known to the detaining authority, the detaining authority could have considered whether in such circumstances he would have been subjectively satisfied on the basis of cogent materials, fresh facts and evidences that it was necessary to detain him in order to prevent him from acting in a manner prejudicial to the maintenance of public order.

14. In Rameshwar Shaw v. District Magistrate, Burdwan ((1964) 4 SCR 921 : AIR 1964 SC 334 : (1964) 1 Cri LJ 257) the petitioner was detained by the order of the District Magistrate under the provisions of 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 while he was in jail custody as an undertrial prisoner in connection with a criminal case pending against him. It was urged on behalf of the petitioner that the detention was not justified under the provisions of Section 3(1)(a) of the Act and as such it was invalid. It was held that the satisfaction of the detaining authority under Section 3(1)(a) is his subjective satisfaction and as such it is not justiciable. It is not open to the detenu to ask the court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of objective tests. The reasonableness of the satisfaction of the detaining authority cannot be questioned in a court of law; the adequacy of the material on which the said satisfaction purports to rest also cannot be examined by a court of law. It has also been observed that if any of the grounds furnished to the detenu is found to be irrelevant while considering the application of clauses (i) to (ii) of Section 3(1)(a) and in that sense of the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order is liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his right of making an effective representation that again may introduce a serious infirmity in the order of his detention. It has been further observed that as an abstract proposition of law, there may not be any doubt that Section 3(1)(a) of the Act does not preclude the authority from passing an order of detention against a person whilst he is in detention in jail but in deciding the question as to whether it is necessary to detain a person, the detaining authority has to be satisfied that if the said person is not detained he may act in a prejudicial manner and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. The past conduct or antecedent history of a person can be taken into account in making a detention order, but the past conduct or antecedent history of the person, on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion drawn by the authority that the detention of the person after his release is necessary. The detention of a person without a trial is a very serious encroachment on his personal freedom and so at every stage, all questions in relation to the said detention must be carefully and solemnly considered. The detaining authority considered the antecedent history and past conduct which was not proximate in point of time to the order of detention and as such the detention order was held to be not justified and so the same was set aside.

15. In Alijan Mian v. District Magistrate, Dhanbad ((1983) 4 SCC 301 : 1983 SCC (Cri) 840) detention orders were served on the petitioners in jail. The detaining authority was alive to the fact that the petitioners were in jail custody on the date of the passing of the detention orders as evident from the grounds of detention. It was stated therein that the position would have been entirely different if the petitioners were in jail and had to remain in jail for a pretty long time. In such a situation there could be no apprehension of breach of public order from the petitioners. But the detaining authority was satisfied that if the petitioners were enlarged on bail, of which there was every likelihood, it was necessary to prevent them from acting in a manner prejudicial to public

order.

16. It was held that the pendency of a criminal prosecution is no bar to an order of preventive detention, nor is an order of preventive detention a bar to prosecution. It is for the detaining authority to have the subjective satisfaction whether in such a case there is sufficient material to place a person under preventive detention in order to prevent him from acting in a manner prejudicial to public order or the like in future.

17. In Ramesh Yadav v. District Magistrate, Etah ((1985) 4 SCC 232 : 1985 SCC (Cri) 514) the order of detention under Section 3(2) of National Security Act, 1980 was made at a time when the petitioner had already been in Mainpuri jail as an undertrial prisoner in connection with certain pending criminal cases. The grounds of detention were served on the petitioner along with the order of detention. The petitioner asked for certain papers with a view to making an effective representation but when the request was rejected, the petitioner made a representation. The Board did not accept the petitioner's plea. The petitioner's detention was confirmed by the State Government. This was challenged in the writ petition. Apart from specifying five grounds in the grounds of detention, a reference was made to the fact that the detenu creates public terror on account of his criminal activities which are absolutely prejudicial to the maintenance of public order. It was further mentioned in the detention order that though the petitioner was detained in district jail yet he filed an application for bail in the court of law and the same has been fixed for hearing on September 17, 1984, and there is a positive apprehension that after having bail he will be out of jail and the detaining authority is convinced that after being released on bail he will indulge in activities prejudicial to the maintenance of public order. It was observed that : (SCC p. 234, para 6)

On a reading of the grounds, particularly the paragraph which we have extracted above, it is clear that the order of detention was passed as the detaining authority was apprehensive that in case the detenu was released on bail he would again carry on his criminal activities in the area. If the apprehension of the detaining authority was true, 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. Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order an order of detention under the National Security Act should not ordinarily be passed.

18. In Suraj Pal Sahu v. State of Maharashtra ((1986) 4 SCC 378 : 1986 SCC (Cri) 452) Sabyasachi Mukharji, J. while agreeing, with the views expressed in Ramesh Yadav v. District Magistrate, Etah ((1985) 4 SCC 232 : 1985 SCC (Cri) 514) observed that the principle enunciated in the said case would 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 offence in respect of which the detenu is accused are so interlinked and continuous 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.

19. In Vijay Narain Singh v. State of Bihar ((1984) 3 SCC 14 : 1984 SCC (Cri) 361 : (1984) 3 SCR 435, 459) wherein an order of detention under Section 12(2) of Bihar Control of Crimes Act, 1981 was served on the petitioner while he was in jail as an undertrial prisoner in a criminal case under

Section 302 IPC and was allowed to be enlarged on bail by the High Court but not yet enlarged, it was held that : (SCC p. 36, para 32)

It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed ..... The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution.

20. In the case of Raj Kumar Singh v. State of Bihar ((1986) 4 SCC 407 : 1986 SCC (Cri) 481) Mukharji, J. observed that while adequacy or sufficiency is no ground for a challenge, relevancy or proximity is relevant in order to determine whether an order of detention was arrived at irrationally or unreasonably. It has been further observed that : (SCC p. 415, para 22)

Preventive detention as reiterated is hard law and must be applied with circumspection rationally, reasonably and on relevant materials. Hard and ugly facts make application of harsh laws imperative. The detenu's rights and privileges as a free man should not be unnecessarily curbed.

21. In Binod Singh v. District Magistrate, Dhanbad ((1986) 4 SCC 416, 420-21 : 1986 SCC (Cri) 490) the petitioner was arrested in connection with the criminal case and he was already in custody. The order of detention dated January 2, 1986 under Section 3(2) of National Security Act was served on the petitioner in jail. It was observed by the court that : (SCC pp. 420-21, para 7)

... There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised .... A bald statement is merely an ipse dixit of the officer. If there were cogent materials for thinking that the detenu might be released then these should have been made apparent. Eternal vigilance on the part of the authority charged with both law and order and public order is the price which the democracy in this country extracts from the public officials in order to protect the fundamental freedoms of our citizens.

22. In Poonam Lata v. M. L. Wadhawan ((1987) 4 SCC 48 : 1987 SCC (Cri) 685), the court observed that : (SCC headnote)

The fact that the detenu is already in detention does not take away the jurisdiction of the detaining authority in making an order of preventive detention. What is necessary in such a case is to satisfy the court when detention is challenged on that ground that the detaining authority was aware of the fact that the detenu was already in custody and yet he was subjectively satisfied that his order of detention became necessary.

23. In Smt. Shashi Aggarwal v. State of U. P. ((1988) 1 SCC 436, 440 : 1988 SCC (Cri) 178), the detenu was detained by the District Judge, Meerut by an order dated August 3, 1987 made under Section 3(2) of National Security Act, 1980. The detention order was approved by the State Government on receipt of the opinion of the Advisory Board. It was challenged by a writ petition before this Court. The court observed that : (SCC p. 440, para 12)

In the instant case, there was no material made apparent on record that the detenu, if released on bail, is likely to commit activities prejudicial to the maintenance of public order. The detention order appears to have been made merely on the ground that the detenu is trying to come out on bail and there is enough possibility of his being bailed out. We do not think that the order of detention could be justified on that basis.

24. On a consideration of the aforesaid decisions the principle that emerges is that there must be awareness in the mind of the detaining authority that the detenu is in custody at the time of service of the order of detention on him and cogent relevant materials and fresh facts have been disclosed which necessitate the making of an order of detention. In this case, the detenu was in jail custody in connection with a criminal case and the order of detention was served on him in jail. It is also evident that the application for bail filed by the detenu was rejected by the Designated Court on May 13, 1988. It is also not disputed that thereafter no application for bail was made for release of the detenu before the order of detention was served on him on May 23, 1988. It appears that in the grounds of detention there is a statement that at present your are in jail yet "there are full possibilities that you may be released on bail in this offence also". This statement clearly shows that the detaining authority was completely unaware of the fact that no application for bail was made on behalf of the detenu for his release before the Designated Court and as such the possibility of his coming out on bail was non-existent. This fact of non-awareness of the detaining authority, in our opinion, clearly establishes that the subjective satisfaction was not arrived at by the detaining authority on consideration on relevant materials. There is also nothing to show from the grounds of detention nor any fresh facts have been disclosed after the detention order dated January 25, 1988 was set aside by the Advisory Board on March 13, 1988, on the basis of which the detaining authority could come to his subjective satisfaction that the detenu, if released on bail will indulge in acts prejudicial to the maintenance of public order and as such an order of detention is imperative. In the grounds of detention three criminal cases have been mentioned. Out of those three criminal cases, criminal case No. 372 of 1985 was lodged on June 26, 1985 i.e. much before the present detention order and several orders of detention were made in the meantime. This criminal case is, therefore, not proximate in time to the making of the order of detention. So it is a stale ground. Another criminal case No. 456 of 1987 is dated October 16, 1987 on the basis of which the previous order of detention was made. This case has nothing to do with the maintenance of public order as it pertains to the recovery of a revolver from the detenu on a search of the person of the detenu, without any valid licence under the Arms Act. The third case No. 2 of 1988 is dated January 2, 1988. This case was in existence at the time of making of the detention order dated January 25, 1988. Moreover, the name of the detenu is not in the FIR. The statements of some of the associates of the detenu have been annexed to the grounds of detention. These statements do not disclose any activity after March 14, 1988 or any activity of the time when the detenu was a free person. Considering all these facts and circumstances we are constrained to hold that there has been no subjective satisfaction by the detaining authority on a consideration of the relevant materials on the basis of which the impugned order of detention has been clamped on the detenu. It also appears that the detenu was in detention as well as in jail custody for about three years except released on parole for short periods. The only period during which he was a free person was from March 14, 1988 to April 13, 1988. During this period no act prejudicial to the maintenance of public order has been alleged to have been committed by the detenu. It is convenient to mention here that Section 15(2) of PASA Act says that a detention order may be revoked by State Government; but such revocation on expiry of detention order will not bar making of a fresh detention order provided no fresh facts have arisen after expiry or revocation of the earlier detention order made against such person. The maximum period of detention in pursuance of subsequent detention order cannot extend beyond twelve months from the date of detention of earlier order. This Court in considering similar provision in Section 13(2) of Preventive Detention Act in Kshetra Gogoi v. State of Assam ((1970) 1 SCC 40, 43 : (1970) 2 SCR 517) held the order of detention as illegal stating that : (SCC p. 43, para 3)

..... Under Section 13(2) what is required is that fresh facts should have arisen after the expiry of the

previous detention. Facts arising during the period of detention are, therefore, not relevant when applying the provisions of Section 13(2).

25. It is highlighted in this connection that in the affidavit-in-reply filed by respondent 1, the detaining authority, he merely denied the specific averments made in para 3(III) that no act prejudicial to the maintenance of law and order on the part of the detenu is alleged to have been committed by the detenu between March 14 to April 13, 1988 etc. without specifically denying those statements. In this background, a mere bald statement that the detenu who is in jail custody is likely to be released on bail and there are full possibilities that he may continue the above offensive activities without reference to any particular case or acts does not show on the face of the order of detention that there has been subjective satisfaction by the detaining authority in making the order of detention in question.

26. We, therefore, quash the order of detention and direct the respondents to set the detenu at liberty forthwith.

</html