
(1989) 06 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 393 of 1989

Alex Alias Dosa Sanna Joseph

APPELLANT

Vs

V.K. Saraf and others

RESPONDENT

Date of Decision : 30-06-1989

Acts Referred:

Bombay Police Act, 1951 — Section 37
Constitution of India, 1950 — Article 226
National Security Act, 1980 — Section 3(2), 3(5), 5A
Penal Code, 1860 (IPC) — Section 324

Citation : (1990) CriLJ 2218

Hon'ble Judges : S.P. Kurdukar, J;Agarwal, J

Bench : Division Bench

Judgement

Kurdukar, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner detenu seeks to challenge the order of detention dated 20th January, 1989 u/s 3(2) of the National Security Act, 1980 (No. LXV of 1980) - hereinafter referred to as "the Act", passed by the Commissioner of Police, Greater Bombay.

2. It is no more in dispute that the impugned order along with the grounds of detention and the material relied upon by the detaining authority were served upon the detenu on 23rd January, 1989.

3. In view of the submission raised before us it would be necessary to set out the grounds of detention :-

It is stated in grounds No. I that on 8th November, 1988 at about 15.15 hours, while Rajendra Sawant was attending to his Pan business at the corner of 13th Road and 18th Road, Opposite K. M. Colony, Bandra (West), Bombay, the detenu armed with a sword came there with his associates viz. (1) Nana alias Mangesh Mohite who was having a hockey stick with him; (2) Robin alias Robert Joseph armed with chopper and (3) Nitesh Kasare armed with sword. The detenu and his associates then went to Rajendra Sawant. One of the detenu's associates, Robin

alias robert Joseph enquired with Rajendra Sawant the whereabouts of Vidyadhar Jadhav and his associates. Rajendra Sawant on seeing the detenu and his associates all armed with lethal weapons got frightened and did not give any reply. The detenu and his associates thereafter completely damaged the Pan shop of Rajendra Sawant with lethal weapons in their possession. One of the associates Robin alias Robert Joseph put a chopper on the chest of Rajendra Sawant while Nitesh Kasare put sword on the chest of Rajendra Sawant and threatened him that if he did not give the information of Vidyadhar and his associates, he and his associates would kill him (Rajendra Sawant) with their weapons, the customers near the pan shop on seeing the detenu and his associates, armed with lethal weapons, ran away due to fear. The residents of the locality also closed their doors upon seeing the detenu and his associates with their lethal weapons. After giving threats to Rajendra Sawant the detenu and his associates ran away. In this connection Bandra Police Station registered an offence u/s 506(II), 427-114, I.P.C. Code. The detenu and his associates were arrested on 30th December, 1988. On 30th December, 1988 the learned Metropolitan Magistrate (Holiday Court) Bandra, ordered detenu to be released on bail in the sum of Rs. 2500/- with one surety of the like amount or in default remanded the detenu to police custody. The detenu has not availed of the said bail so far.

The second ground reads thus :- On 18-12-1988 at about 21.45 hours, while Pratap Sawant was waiting in the verandah at Telwadi Chawl, Dr. Ambedkar Road, Khar for fetching water from the common water tap of the chawl, the detenu and his associates i.e. Robin alias Robert Joseph, Nitesh Kasare and Jijya all displaying their hockey sticks passed from the room of Pratap Sawant. The detenu's associate Robin alias Robert Joseph enquired with Pratap Sawant as to why he was staring at the detenu and his associates. Pratap Sawant denied that he was looking towards the detenu and his associates. Thereafter the detenu and his associates assaulted Pratap Sawant with hockey sticks. Pramod Kadam a friend of Pratap Sawant and his sister Shobha tried to intervene when the detenu and his associates assaulted Pramod Kadam by hockey sticks. Thereafter the detenu and his associates went away. Injured Pratap Sawant and Pramod Kadam were treated for their injuries at the Bhabha Hospital Bandra Police station registered offence bearing C.R. No. 1227 of 1988 against the detenu and his associates for offence u/s 324-114, I.P. Code. On 31-12-1988 the learned Metropolitan Magistrate (Holiday Court) Bandra, ordered the detenu and his associates to be released on bail in the sum of Rs. 3000/- each with one surety in the like amount or in default remanded them to police custody. The detenu has not availed the bail facility granted to him so far.

The third ground in the grounds of detention recites that on 29-12-1988 police constable buckle No. 23479/BD Eknath Chalke along with the staff of Bandra Police Station were on night patrol duty at Dr. Ambedkar Road, Khar. When the police patrol party reached near the BEST bus stop route No. 211 on Dr. Ambedkar Road, Khar, on 30-12-1988 at about 6.30 hours, they noticed detenu

and his associate Rajendra Dhotre moving in a suspicious manner. Police patrol party accosted detenu and his associate. On taking personal search of the detenu in the presence of two independent panch witnesses a Kukari, was recovered from the person of the detenu which he had concealed near his stomach. The said weapon was seized from detenu's possession under a panchanama. Rajendra Dhotre an associate of the detenu was found in possession of a sword which was also seized under a panchanama. In this connection an offence has been registered against the detenu vide Bandra Police Station L.A.C. No. 8918 of 1988 for offence u/s 37(a) of the Bombay police Act, 1951 for contravening the orders of the Commissioner of Police, Greater Bombay. On 30-12-1988, the learned Metropolitan Magistrate (Holiday Court) ordered the detenu to be released on bail in the sum of Rs. 2500/- with one surety in the like amount and in default remanded to the police custody. The detenu has not availed the bail facility so far.

4. The detaining authority in view of these criminal activities of the detenu and his associates was subjectively satisfied that the residents of Dr. Ambedkar Road, Khar (West), Bombay are scared and the even tempo of life of the citizens in that area has been disturbed. In view of this police patrolling has been kept in these areas with a view to create confidence in the minds of people and to bring normalcy. It is further stated in the grounds of detention that in none of these cases referred to hereinabove the detenu has availed the bail granted to him by the competent Court. However there is possibility of the detenu availing the same. The detaining authority on being subjectively satisfied that in the event of detenu becoming a free person, there is likelihood that the detenu would revert to his criminal activities thereby causing public disorder. In the conclusion the detaining authority opined that due to the above mentioned activities of the detenu and his associates peace loving citizens of Dr. Ambedkar road, Khar (West), Bombay are experiencing a sense of insecurity and are living under constant shadow of fear and which activities of the detenu are prejudicial to the maintenance of public order in the said locality of Greater Bombay. With a view to preventing the detenu from continuing these criminal activities it is necessary to detain him (the detenu) under the National Security Act. Rest of the recitals in the grounds of detention are not germane to the contentions raised before us and, therefore, they are not recited in this judgment.

5. Shri Chitnis learned Advocate appearing in support of this petition raised several contentions and we will be dealing with those contentions in the order in which they have been raised.

The first contention raised by Shri Chitnis is that the representations forwarded by him on behalf of the detenu to the Government of India, Ministry of Home, on 11-4-1988 have not been considered expeditiously and in the absence of any cogent explanation forthcoming from the government of India explaining the delay the continued detention of the petitioner must be declared illegal.

6. At the outset it must be stated that this writ petition has been filed by the

detenu through his advocate Shri S. R. Chitnis. Apart from not filing the grounds of detention properly the detenu has also not filed the copy of the representation along with this writ petition which he had forwarded to the Government of India on 11-4-1989. Therefore the compilation of this writ petition was incomplete and incomplete copies thereof were served upon the State Government as well as the Union of India. Mrs. R. P. Desai and Mrs. Masurkar appearing for the respondents raised objection with some justification but, however, in the matters of detention this court would not be that technical as expected by these learned advocates. During the course of hearing Shri Chitnis furnished the copies of the said representations to the court as well as to the advocates for the respondents.

7. Mrs. Desai learned Public Prosecutor appearing for respondents 1, 2, 4 and 5 produced before us the entire file to enable us to get all the relevant dates in connection with the representation sent to the Government of India on 11-4-1989. This representation is addressed by Shri S. R. Chitnis, Advocate on behalf of the detenu. This representation was received by the Union of India on 17-4-1989. 18-4-1989 was a holiday. On 19th April, 1989 the Home Secretariat of the Union of India gave a wireless message to Special Secretary, Home Department, Bombay, which reads as under :

"Reference Representation from S. R. Chitnis advocate on behalf of Shri Alex alias Dosa Sanna Joseph detained under N.S.A. 1980. Kindly furnish actual date of detention. Date on which all grounds of detention supplied to the detenu and parawise comments on representation. Matter most urgent."

This wireless message was received by the Home Department (Special). Government of Maharashtra on 20th April, 1989 and immediately on 21st April, 1989 the information was forwarded to the Home Secretariat, Government of India. The wireless message reads as under :-

"Required information is as under. Detaining authority i.e. Commissioner of Police, Greater Bombay is being requested to furnish his parawise comments on the representation. Actual date of detention is 23-1-1989 and detenu was supplied with the grounds of detention on 23-1-1989. Representation made to State Government has been considered and rejected. The decision taken by this Government has been communicated to the representationist on 17-4-1989. The Advisory Board has opined that there is sufficient cause for the detention of the concerned detenu. Government has accordingly confirmed the detention order dated 20-1-1989 in respect of the above detenu vide Government Order, Home Department of even number dated 9-3-1989. Incidentally I am directed to request you to state of receipt by you of the Government letter Home Department of even number dated 20-1-1989 forwarding therewith the report u/s 3(5) of the National Security Act.

8. On the very same day the Assistant Secretary to the Government of Maharashtra forwarded the representation to the Commissioner of Police, Greater

Bombay - detaining authority to furnish its parawise comments on the representation to the Government at once under intimation to its department. The detaining authority forwarded its parawise comments vide their letter dated 27-4-1989. This letter reached the Home Secretariat, Union of India on 8-5-1989. The Competent Authority after pursuing the representation dated 11-4-1989 rejected the same on 11-5-1989. 13th and 14th May, 1989 were holidays. On 15-5-1989 the decision was communicated to the State Government by crash message.

9. The questions that need to be considered on the facts of the present case are as to whether (i) calling of the information by the Home Secretariat, Union of India, vide their wireless message dated 19th April, 1989 was an act nothing but a mechanical approach to the representation, and (ii) whether there was a delay on the part of the Home Secretary, Union of India, in disposing of the representation of the detenu's advocate dated 11-4-1989.

10. As far as the first part namely that calling for the information as found in the wireless message dated 19-4-1989 Mr. Chitnis strenuously urged that this communication clearly indicates non-application of mind on the part of the concerned authority in the Home Secretariat, Union of India, inasmuch as the Union of India was very much in possession of the relevant material concerning the detenu in a report forwarded by the State Government u/s 3(5) of the Act. He therefore urged that on this ground alone the continued detention be declared invalid and detenu be released forthwith. In support of this submission Mr. Chitnis drew our attention to two unreported judgments of this Court (1) Yavhan alias A-one Sonaji Ranshur v. Commr. of Police, Thane; CrI. Writ Petn. No. 757 of 1988 decided on 6th September, 1988 by Jahagirdar and Tipnis, JJ. and (2) Jon Mohammad s/o Roshanbhai Rogankar v. B. J. Nisar; Criminal Writ petn. No. 905 of 1988 decided on 29th November, 1988 by Dharmadhikari and Ghodeswar, JJ. Mr. Chitnis drew our attention to paragraph 3 of the judgment in Writ Petn. No. 757 of 1988 in which the wireless message has been quoted and it reads as under : "... the Government of India asked for information relating to the date of the detention and the date on which the grounds of detention were supplied to the petitioner. The Government of India also asked for parawise comments on the representation" It is true that Jahagirdar J. in this case was not satisfied with the affidavit-in-reply on behalf of Union of India as well as the State Government inasmuch as he observed, "In any case, we do not see how parawise comments on the representation received by the Central Government could be regarded as vital information for which a request could be made by the wireless message." The Court also found that despite the reply sent by the State Government the Central Government repeated its request for vital information again by another wireless message sent on 3rd August, 1988. To this the Government of Maharashtra replied immediately on 5th August, 1988 by pointing out that the information asked for has already been sent and if the Government of India desired parawise comments on the representation, naturally a copy of the same should be sent to it. The Court also found that if the Union of India

wanted to have parawise comments it was expected on the part of the Union of India to send the representation received by the Union of India to the State Government and/or detaining authority for their parawise comments. Having not done so and in the process of communication from one end to the other and vice versa there was a delay in disposing of the representation. The Division Bench therefore opined that this exercise on the part of Union of India was a mechanical one which has caused enormous delay in disposing of the representation. On these facts the Division Bench held that the continued detention of the detenu was rendered illegal on the ground of non-disposal of the representation expeditiously.

11. The facts in the case of Jon Mohammad Roshanbhai Rogankar (Supra) the representation dated 17th August, 1988 was received by the Central Government in the Ministry of Home Affairs on 24th August, 1988 through the President's Secretariat. Since the Home Secretariat found that certain vital information was required for further consideration of the representation a wireless message was sent to the State Government on 25th August, 1988. The required information was received by the Central Government in the Ministry of Home Affairs on 16th of September, 1988 vide the letter dated 9th September, 1988 of the Commissioner of Police, Pune and the representation was rejected on 3rd October, 1988. The Division Bench then referred to the affidavit of Ishwar Singh, and stated that it is clear that all the material documents were forwarded with the report under S. 3(5) of the Act by the State Government and it was nowhere disclosed in the affidavit of Ishwar Singh that in spite of all these documents how the comments were necessary from the detaining authority and in that context it was observed, "unless it was done mechanically". On these facts the Division Bench held that there was delay on the part of the Central Government in disposing of the representation and thus continued detention has been rendered illegal. Consequently the detention order came to be quashed and set aside.

12. Taking advantage of these two judgments Mr. Chitnis urged that in this case also the wireless message is more or less in the same form and, therefore the present case fairly and squarely falls within the ratio of these two judgments and the continued detention must be held illegal. It is well settled that each case has to be decided with reference to the facts of that case and in such matters there cannot be an absolute rule. This is because the representations of the detenus cannot be the same. In the present case we find that the representations sent by Mr. S. R. Chitnis on behalf of the detenu do call for some additional information and from that angle we are of the opinion that no fault whatsoever can be found with the Home Secretariat, Central Government when they asked for parawise comments. In the representations it has been stated and we may quote, "4. With reference to ground No. 1 of the grounds of detention, I have to submit that the said ground at best relates to an assault on a specified individual Shri Rajendra Sawant out of enmity on 8-11-1988 and as such this ground has no relevance to the maintenance of public order."

"5. With reference to the ground No. 2 of the grounds of detention, I have to submit that this incident is also concerned with an assault to one Pratap Sawant on 18-12-1988 and hence the assault being on a specified individual out of enmity it can never be said that the activities of the detenu has any relevance to the maintenance of public order. Hence this ground also has no relevance with the public order."

In paragraph 7, after setting out the conclusion of the detaining authority contained in the grounds of detention, it is stated, "..... The detention could be ordered only with a view to preventing a person from acting in any manner prejudicial to the maintenance of public order and since the bail order was not availed of the eventuality which was contemplated by the detaining authority had not arisen as such the order of detention not called for."

13. In the context of these recitals in the representations we have perused the grounds of detention. As far as the averments contained in paras 1 and 2 of the grounds of detention we find that there is no reference whatsoever to any such enmity therein. It is the petitioner in his representation who has introduced a new fact namely an enmity between the detenu and the victims. If that be so, in our opinion, this is an additional and new fact which the detenu wanted to be considered while dealing with his representation and in that eventuality if the Home Secretariat called for parawise comments we do not see any mechanical approach in dealing with the representations as contended by Mr. Chitnis. As regards paragraph 7, on the date of passing of the detention order on 20-1-1989, the detenu had not availed the bail but thereafter till the date of sending the representation on 11-4-1989 as to whether the detenu availed the bail or not to which a factual contention has been raised in the representation that detenu had not availed the bail. This information, in our opinion, although not very significant but it is so stated in the representation. Therefore, in our opinion, calling for the parawise comments cannot be branded as a mechanical approach on the part of the Home Secretariat of the Union of India.

14. Mrs. Masurkar, learned counsel appearing for the Union of India drew our attention to the judgment of the Supreme Court in *Frances Coralie Mullin Vs. W.C. Khambra and Others*, . In this case also while disposing of the representation the concerned authority solicited opinions of investigators of fact and advisors on law which were necessary in the circumstances of the case. From this judgment therefore it is clear that it cannot be said that in a given case when it is found necessary and demonstrated by the authority of the Union of India that having regard to the facts and circumstances of the case, parawise comments were required and if it occupied sometime that by itself would not vitiate the continued detention.

15. Mrs. Desai learned Public Prosecutor drew our attention to two unreported decisions of this Court which are having a material bearing on the first contention raised by Mr. Chitnis. In *Sunil Harishchandra Bagade v. V. K. Saraf*, Criminal Writ Petn. No. 330 of 1988 decided on 23rd June, 1988 by Pendse and Tipnis JJ. an

identical argument was raised on behalf of the detenu and the Division Bench observed as follows :

"It is pure surmise of the learned counsel that the vital information sought by the Central Government must be in respect of the opinion of the Advisory Board. The learned counsel suggested that we should call upon the Central Government to disclose what was the information sought and then examine his submission. We decline to adopt any such course. It is not permissible to make a roving enquiry on the basis of the submissions which have no foundation. We repel the contention of Mr. Gupte that the representation was rejected by the Central Government without consideration and on the basis of the opinion of the Advisory Board."

16. In *Shakil Ahmed Mohammed Hussein Tade v. V. K. Saraf*, Criminal Writ Petn. No. 568 of 1988 decided on July 8, 1988 by Pendse and Tipnis, JJ. the Division Bench observed as follows :

".... Shri Kotwal also urged that the representation made by the detenu did not require any comments and the Central Government ought not to have sought comments from the State Government. It is not for this Court to determine whether the Central Government should seek comments or otherwise. In case the comments would not have been called for, then the detenu would have urged that his representation was turned down without taking into account the relevant facts. It is undoubtedly true that there is some delay in forwarding the comments, but on the facts and circumstances of the case we are not inclined to strike down the order of detention on this count. The submission that the order of detention is vitiated for failure to examine the representation speedily therefore deserves to be turned down."

17. In view of the above discussion we are, therefore, of the opinion that no absolute rule can be laid down as to whether calling for parawise comments and/or vital information is uncalled for on the part of the Union of India. Each case has to be decided with reference to the averments and the contentions raised in the representation by the detenu and if on justifiable grounds the Competent Authority in the Home Secretariat of Union of India felt it necessary to call for the comments, vital material and/or parawise comments and if any time is consumed by that process, the continued detention cannot be held illegal on the ground that there is a delay in disposing of the representation and the parawise comments were uncalled for. In our opinion, the two judgments of this Court rendered by *Jahagirdar and Tipnis, JJ.* and *Dharmadhikari and Ghodeswar, JJ.* are clearly distinguishable and will have no application to the facts of the present case. In this view of the matter, the first submission of Mr. Chitnis must fail.

18. It is then urged by Mr. Chitnis that it is not open to the detaining authority to pass the detention order as a substitute measure. While elaborating this argument Mr. Chitnis drew out attention to the grounds of detention and in particular the following paragraph :-

"In none of the cases referred to in the above grounds, you have availed of the bail order granted to you by the competent court. However there is possibility for you to avail of the same. I am satisfied that in the event of your becoming a free person, there are likelihoods for you to revert your criminal activities causing public disorder."

In support of this submission Mr. Chitnis heavily relied upon the judgment of the Supreme Court in *Ayya alias Ayub Vs. State of U.P. and Another*, . While dealing with this very same contention raised before the Supreme Court, it held in paragraph 23 (of SCC) : (para 11 of Cri LJ) as follows :

"In the present case, we are not, however, impressed with the submission of Shri Garg that the detention was solely for the purpose of rendering nugatory the order of bail, the grant of which the detaining authority had then considered quite imminent. It is true that if the only ground or justification for the detention is the apprehension that the detenu was likely to be enlarged on bail, the detention might be rendered infirm.

The Supreme Court also quoted the observations in the case of *Ramesh Yadav Vs. District Magistrate, Etah and Others*, and the observations are as follows :

"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 of detention under the National Security Act should not ordinarily be passed."

In the very same judgment the Supreme Court has further observed (para 11 of 1989 Cri LJ 991) :-

"It all depends upon the circumstances of each case. But it is necessary for the detaining authority to resist the temptation to prefer and substitute, as a matter of course, the easy expedience of a preventive detention to the more cumbersome one of punitive detention."

19. Taking support in part from the above quoted observations, Mr. Chitnis urged that it is not open to the detaining authority to pass the detention order as a substitute measure. We would have agreed with the contention where the detention order is passed solely on the ground or tried to be justified on the ground that the detaining authority apprehended that the detenu was likely to be enlarged on bail. In the present case we have already indicated that the first two grounds which in our opinion clearly indicate the potentiality of the detenu to indulge in criminal activities. Both these criminal activities were against an innocent public. From the grounds of detention it does not appear that all the

victims had any enmity with the detenu. The way of life of the detenu appears to be to get along with the acetates armed with deadly weapons and on some or the other pretext pick up a quarrel and cause injuries to innocent persons. In the first ground it has been stated that the detenu's activities were creating terror, that on the date of first incident even the people who had gathered around the Pan Shop of Rajendra Sawant ran away, and the residents in that locality closed their doors. It is this fear that really disturbs the even tempo of the society and if the people residing in that locality remained under a constant fear and terror, in our opinion this does involve the maintenance of public order and, therefore, it cannot be doubted that the preventive measure was not uncalled for in the present case. If in the context of the grounds of detention the judgment of the Supreme Court in *Ayya alias Ayub Vs. State of U.P. and Another*, is perused in our opinion, it is quite clear that the order of detention has not been made by the detaining authority solely on the ground that there is apprehension that the detenu is likely to be enlarged on bail. In paragraph 23, the Supreme Court has observed that it is open to the detaining authority after considering the material placed before it and also after taking into account the eventuality of the bail to pass an order of detention with a view to preventing the detenu from continuing with the criminal activities. The portion which we have underlined from the judgment of the Supreme Court does not mean and indicate that it is an absolute rule as contended by Mr. Chitnis but all that is required to be taken into account is to find out as to whether the detention is solely based on the apprehension that the detenu is likely to be released on bail or that there is sufficient material on record to warrant for such detention order.

20. Mr. Chitnis then urged that as far as the grounds 1 and 2 in the grounds of detention are concerned they have at the most assuming to be true may cause disturbance to the victims and there was no question of causing any disturbance to the public order. He, therefore, urged that at the most both these grounds will fall within the ambit of law and order and not public order. We are afraid we are unable to accept this contention. Grounds 1 and 2 clearly indicate the criminal activities of the detenu which are causing alarm and danger to the peace loving citizens residing in that locality. We therefore do not see any substance in the second contention that grounds 1 and 2 fall within the ambit of law and order and not public order.

21. It is next contended by Mr. Chitnis that the third ground which refers to the seizure of weapon in the breach of prohibitory order is wholly outside the purview of the detention order and mere possession by itself cannot be a ground to detain a person under the Act. In support of this submission Mr. Chitnis drew our attention to the unreported judgment of this Court in *Vivek Shivaji Palekar v. State of Maharashtra*, Criminal Writ Petn. No. 1040 of 1988 decided on 20th March, 1989 by S. K. Desai Ag. C. J. and M. M. Qazi, J. From the facts of that case it appears that the judgment was based on two incidents (i) raid on a social club and (ii) detenu was found in possession of a country made revolver. As far as the first ground is concerned the Court held that it does not fall within the

ratio of public order but falls within the ambit of law and order. As regards the second ground the Court observed that unless there is overtact indicated in the grounds of detention, mere possession of the unlicensed revolver per se would not be a matter of public order. This judgment is again clearly distinguishable. In the present case having regard to the past criminal activities of the detenu in the said locality possession of the deadly weapon with the petitioner at early hours of 6.30 a.m. on 29-12-1988 and further more the petitioner was found moving in suspicious circumstance would be a pointer to the previous conduct which has been reflected in the first two grounds. In our opinion if the detaining authority has taken into account this ground along with other two grounds, we see no reason to hold that the subjective satisfaction of the detaining authority is in any way vitiated. Assuming that the judgment in Criminal Writ Petn. No. 1040 of 1988 Vivek v. State of Maharashtra applies to the facts of the present case and the third ground may not be available to the detaining authority yet the detention order can be saved by taking resort to section 5A of the Act.

22. In the midst of the judgment, Mr. Chitnis drew our attention to another judgment of the Supreme Court in Angoori Devi for Ram Ratan Vs. Union of India (UOI) and Others, . He drew our attention to Headnote 2. It is needless to state that it is well settled that there is a clear distinction between public order and the law and order, and each case has to be decided with reference to the facts of that case.

23. In view of the above discussion we are of the opinion that the impugned detention order is perfectly valid and legal and no interference is called for. In the result, the writ petition fails and the rule is discharged. No order as to costs.

24. Petition dismissed