
(1965) 07 BOM CK 0002

In the Bombay High Court

Case No : Criminal Application No. 616 of 1965

Gajanan Vishwanath Ketkar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 22-07-1965

Acts Referred:

Defence of India Rules, 1962 — Rule 30(1)

Citation : AIR 1967 Bom 96 : (1966) 68 BOMLR 321 : (1967) CriLJ 427 : (1966) ILR (Bom) 839

Hon'ble Judges : Palekar, J; Naik, J

Bench : Division Bench

Advocate : M.D. Pathak, for the Appellant; R.B. Kotwal, A.G.P., for the Respondent

Judgement

Naik, J.

(1) This is an application by Gajanan Vishwanath Ketkar u/s 491, Cr. P. C. and Art, 226 of the constitution of India for a Writ of habeas corpus challenging the order of detention passed against him on 24-11-64. The petitioner has alleged that his detention is actuated by malice and that it cannot be justified for the reasons for which it purports to have been made. The averments contained in the petition may be outlined as follows. The petitioner has given his antecedents in the first ten paragraphs of the petition. He is an old man of 67 years. He is a double graduate of the Bombay University. He is the grandson of the late Lokmanya Bal Gangadhar Tilak. He has been in public life for the past forty-five years. He was convicted during the Salt Satyagrah movement when he participated in what is historically known as Dandi march in 1930. In 1935 he was the President of the Maharashtra Provincial Congress Committee. He was founder Secretary and President of Gita Dharma Mandal. He was the Vice-President of the Anath Hindu Mahila Ashram. He was the treasurer of the Raigarh Memorial Committee, Tilak Janma Shatabdi Fund, Savarkar Satkar Nidhi and also of Hindu Sanghatan Nidhi. He was also the founder of the Poona School and

Home for Hindu Anant Ashram and one of the founder members of Gita Jayanti movement. He had served in the Hindu Maha Sabha organization in various capacities. He was the Editor of Kesari for 5 years till 1950 and a Trustee of the Kesari Maratha Trust. He was also the editor of sister english paper "Maratha" till 1955. He was also the Editor of "Tarun Bharat" a Marathi daily of Poona, from 1957 to 1964. The petitioner says that he retired from active political life in 1957 and since then has been devoting himself to writing articles in newspapers and periodicals. The petitioner relies upon these antecedents to suggest that it is unlikely that he would take part in prejudicial activities.

(2) The petitioner has then stated that since 1957 he was championing the release of Gopal Godse and Vishnu Karkare, the life convicts in Mahatma Gandhi murder case and for that purpose he wrote articles in newspapers. He was advocating in these articles that the usual remission of sentence which is awarded to other prisoners, should not be denied to Godse and Karkare. We were told that had the remission due to the prisoners under the Jail rules been given to Godse and Karkare, they would have been released by about 10-12-1962. It appears that Godse and Karkare had made petitions to the Supreme Court for releasing them from jail on the grounds that they had served their sentences. Pending these petitions, on 13-10-64, orders were passed by the Central Government for releasing Godse and Karkare. Both Godse and Karkare came to Poona about two days prior to the date on which the important event which led to petitioner's detention occurred i.e., 12-11-1964. Friends and admirers of Godse and Karkare by performing what has been called Satyavinayak Mahapooja. One M. G. Ghaisas, who is petitioner in Criminal Application No. 675 of 1965, issued printed invitation cadres under his signature, a copy of which has been placed before us at Ex. A. It runs thus;

"Shri Gopalrao Godse, brother of the patriot late Nathuram Godse, Shri Vishnupant Karkare and Shri Madanlal Pahawa have been released from jail. Out of joy for the said release, we, a circle of friends, are going to perform the mahapuja of shri Satyavinayak. We propose to call the aforesaid three persons for offering congratulations to them. You are, therefore, requested to remain present along with your friends circle."

The petitioner has suggested that he received an invitation for attending this mahapuja, because he was one of those who championed the cause of release of Godse and Karkare. The time mentioned in the invitation card i.e., 5-30 to 7-30 p.m. and the place where the pooja was to be performed is Udyan Karyalaya 619 Shaniwar Peth, Poona 2. The petitioner has alleged that he went to the place at about 7 or 7-30 p.m. by which time Pooja was over. about 125 of 150 persons were present on this occasion. This assembly constituted itself is a meeting which was addressed, in the first instance, by Godse and Karkare followed by the petitioner, who had been proposed to be the Chairman. The contents of the speech made by the petitioner is a matter of dispute in these proceedings. Two rival versions have been placed before us about the contents of the petitioner's

speech. According to the petitioner, no speaker eulogized the murder of Mahatma Gandhi.

"The petitioner expressed satisfaction that at long last Gopal Godse and Vishnu Karkare were now free. He wished them a happy life. He also expressed that it was his misfortune that he could not dissuade Nathuram Godse from the idea of murdering of Gandhiji. He gave advance information of Godse's idea to Shri B. G. Kher by a registered letter through late Shri Balukaka Kanitkar, a veteran Congress leader of Poona. The petitioner further said that by release of Godse and Karkare a historical chapter of Gandhi murder case has been completed. Gopal Godse and Karkare also narrated their experiences of prison life Shri M. G. Ghaisas thanked those present for attending the said function."

According to the petitioner, this is all that happened on that day. It is stated in the petition that reports of the proceedings appeared in the "Indian Express" newspaper on 13-11-64. On subsequent days, reports appeared in other newspapers as well. It is an admitted fact that on 15-11-64 another ceremony known as Shradha ceremony was held at the same place viz., Udyan Karyalaya. this ceremony was organised by Sindhutai Godse, the sister-in-law of Nathuram Godse. The petitioner did not attend this function and had nothing to do with the same. Since the "incident, which took place on 15-11-64, in respect of the Shradha ceremony has been relied upon by the District Magistrate, respondent No. 1, and also by the petitioner, we may set out certain facts in regard to the same on which there is not much dispute. It appears that the shradha ceremony was being held annually. Permission from the police to install a loudspeaker was secured on this occasion on 15-11-64 and three persons spoke on this day. They are N. G. Abhyankar, Advocate (who is petitioner in Cr. Appln. No. 614 of 1965). P.V. Davre, Advocate (who is petitioner in Cr. Appln. No. 615 of 1965) and V. P. Bapat (who is petitioner in Cr. Appln. No. 870 of 1965).

(3) Questions were asked in the State Legislative Assembly as also in the Parliament as to why action was not taken against those who participated in the said functions of Pooja and shradh ceremony. Reference has been made to this in paragraph 16 of the petition. It is further stated in the same paragraph that some persons demanded that action should be taken against the participants of the functions. The petitioner's case is that as a result of the commotion created by the newspaper reports and the debate in the Assembly and the Parliament, a storm of controversy was raised as a result of which he was relieved from the post of editorship of Tarun Bharat on 19-11-64. It appears that the petitioner left Poona on 23-11-64 and reached Madras on 24-11-64. The District Magistrate, Poona passed an order on 24-11-64 for the detention of the petitioner. The same day, the District Magistrate passed similar orders against some other persons, who have all preferred petitions in this Court. The Order runs thus:

"Whereas I, M. A. Deshmukh, District Magistrate, Poona, am satisfied with reference to the person known as Shri Gajanan Vishwanath Ketkar of Poona that with a view to preventing him from acting in a manner prejudicial to the Defence

of India public safety, the maintenance of public order it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred upon me by rule 30 (a) (b) of the Defence of India Rules, 1962 read with the Government Notification in Home Department (Special) No S. B. III/DOR 1162-I dated the 9th November 1962, I do hereby direct that the said Shri Gajanan Vishwanath Ketkar be detained."

The petitioner has alleged that on 25-11-64, when he came to know about the order of detention, he went to the Police Commissioner, Madras, and surrendered himself. He was then being taken back to Poona and while the train was at Dhond station the order of detention was served upon him on 28-11-64. the order of detention came to be confirmed by the State Government on 1-2-1965. Review was made as a result of which the order was again confirmed on 13-5-65. It is against this order of detention passed by the District Magistrate on 24-11-64, that the petitioner has filed the present petition.

(4) The petitioner after setting out his own version about the contents of the speech which he delivered on 12-11-64, contends that this did not amount to eulogizing Nathuram Godse, the assassin of Mahatma Gandhi. He has alleged that it was as a result of the agitation that was carried out in the press and also the questions asked in the State Assembly and the Parliament that the Government of Maharashtra and the Union Government were compelled to take action. According to him, the two Governments felt themselves embarrassed, because the petitioner had disclosed that he had informed B. g. Kher, the then Chief Minister of Bombay, about the plan to murder Mahatma Gandhi and yet no action was taken to prevent the commission of the offence. According to the petitioner, the District Magistrate has not applied his mind and has not reached satisfaction, which is the pre-requisite for passing the order of detention. The petitioner has also alleged that the order of detention is mala fide and in this respect has relied upon two circumstances viz., that the Government of India has announced in the month of March 1965, the appointment of one-man Commission comprising Shri G. S. Pathak to investigate into the correctness or otherwise of the statement attributed to the petitioner in the course of the speech on 12-11-64, and that this is just an eyewash, the object being to keep the petitioner in detention for an unlimited length of time. It is also suggested that the District Magistrate took recourse to the action of preventive detention on instructions from the Government, who felt embarrassed by the disclosure made by him.

(5) The District Magistrate, Poona who is respondent No. 1 to this petition, has put in his affidavit and countered the allegations contained in the petition. He has set out his version as to the contents of the speech delivered by the petitioner, Ketkar, on 12-11-64 at paragraph (6) of the affidavit. The relevant portion runs thus:

" It is denied that the said function was a private function. From the

information obtained from the record, I say that this was a public function organized by the friends and the admirers of Nathuram Godse to eulogize Nathuram Godse, for the assassination of Mahatma Gandhi. At this function, which was held in Udyan Mangal Karvalava. Poona, "a Satyanarayan Mahapooja" was performed. The record before me shows that this function was attended by about 125 to 150 persons who were all admirers of Nathuram Godse. At this function, speeches were made and the petitioner was the principal speaker on this occasion."

The District Magistrate has denied that the petitioner was invited on this occasion, because he had campaigned for the release of Godse and Karkare. According to the District Magistrate, the petitioner was invited because he belonged to the group of persons who, believed that Nathuram Godse had done a service to India by assassinating Mahatma Gandhi. The District Magistrate stated that all those who had gathered at this function were persons who shared this view which was reflected in the speeches delivered at this function. Again, at paragraph (8), the District Magistrate has asserted;

"I say that at this function speeches were made publicly eulogizing Nathuram Godse for the assassination of Mahatma Gandhi."

The District Magistrate had denied that the petitioner had in the course of that speech expressed that it was his misfortune that he could not dissuade Nathuram Godse from carrying out the idea of murdering Mahatma Gandhi. The District Magistrate has proceeded to say:

"On the contrary, the speech which the petitioner delivered sufficiently indicated that he had prior knowledge of the conspiracy which had been hatched to murder the "Father of the Nation" and that the petitioner was among those who admired Nathuram Godse for having put an end to the life of Mahatma Gandhi. I have no knowledge as regards the statement that the petitioner has given advance information of Godse's plan to late Shri B. G. Kher through late Shri Balukaka Kanetkar by a registered letter".

At paragraph (9), the District Magistrate has asserted that the two functions viz., one held on 12-11-64 and the other on 15-11-64, were linked together and were arranged and attended by the friends and admirers of Nathuram Godse. He has suggested that it was only an accident that the petitioner was not present on the function held on 15-11-64. At paragraph (11), the District Magistrate has asserted that the action taken by him was the result of the application of his own mind to the material placed before him and he was not influenced by any outside agency. At paragraph (18), the District Magistrate had stated that it was not true that the detention of the petitioner was made with an intention to curb his activities but that he issued the order of detention after applying his own mind.

"To the material regarding the activities of the petitioner placed before me (District Magistrate) and after satisfying myself that it was necessary to detain the petitioner with a view to preventing him for acting in a manner prejudicial to

the Defence of India, the Public safety and the maintenance of public order".At paragraph (34) in reply to ground No. 14 mentioned in paragraph (44) of the petition the District Magistrate has stated:

".I had personally applied my own mind to the report of a senior Police officer and my order was the result of the application of my own mind."

(6) S. P. Agashe, Under Secretary to the Government of Maharashtra, Home Department and General Administration Department, has put in an affidavit on behalf of the State of Maharashtra, which has been added as respondent No. 2 to this petition. Agashe has denied that there was any embarrassment caused to the Government of Maharashtra on account of the publicity given to the proceedings of the two functions and by the speech made by the petitioner. He has also denied that that was the reason why the petitioner came to be detained. He has also denied that any pressure was exerted on the Government of Maharashtra by certain persons within and without the State of Maharashtra for taking punitive action against those who are active members of the Hindu Mahasabha. He has also denied that the detention of the petitioner was the result of the centrally determined policy of the Government of Maharashtra.

(7) The Union of India, which has been added as respondent No. 3 to this petition, has not appeared nor has anyone put in affidavit on its behalf. The Superintendent, Naik Road Central Prison, who has been added as respondent No. 4, has not put in any affidavit in this case.

(8) Certain important and intriguing questions have arisen for consideration in this petition. Before addressing ourselves to these questions, it will be convenient to set out the rival arguments advanced before us. Mr. Pathak, for the petitioner, contended that the function that was arranged on 12-11-64 was a private function. Invitations were issued to the friends of Godse and Karkare. The function was not open to the public and was restricted to the invitees. The object of the function was not to make speeches. The main object was to perform Satyanarayan or Satyavinayak Mahapooja, for expressing joy felt by the friends for the release of Godse and Karkare. Mr. Pathak contended that the very fact that the time for attending the function was mentioned as 5.30 to 7.30 p.m. shows that it was not expected that any speeches would be delivered on that occasion. He also pointed out that the petitioner, Ketkar, also came at a late stage. According to Mr. Pathak, the idea of the assembly being converted into a sort of meeting cropped up only after the appearance of the petitioner. Mr. Pathak contended that since the meeting was a private one and since no outsiders were invited to this meetings, there was no possibility of the District Magistrate receiving authentic report of the speeches delivered on this occasion and in particular the speech delivered by the petitioner. Mr. Pathak, therefore, contended that the version that has been placed before the Court on behalf of the petitioner, is the only authentic version and it should be accepted as such. He argued that the only activity for which the petitioner has been ordered to be detained is the one relating to the part played by him on 12-11-64. He pointed

out that the petitioner did not participate in the function held on 15-11-64. Had it been the intention of the petitioner to indulge into a sort of propaganda, he would never have missed the opportunity of addressing the gathering on 15-11-64. Mr. Pathak, therefore, contended that one incident viz., the impromptu speech delivered by the petitioner on 12-11-64, could not form the basis of satisfaction, which is the pre-requisite for passing the order of detention. He also argued that there was not proximate or direct c connection between the speech delivered by the petitioner and the defence of India, the public safety and the maintenance of public order being brought into jeopardy. He particularly emphasized that the speech could possibly have no effect on the defence of India and there would not be even a remote c connection between the speech delivered by the petitioner and the defence of India. Finally, he argued that it is not merely the district Magistrate of Poona who has passed the orders of detention, but that the District Magistrates of three more districts have passed the orders of detention, more or less, on the same day against different individuals who participated in the two functions. He contended that this shows that this was a centrally directed operation. According to him, the orders of detention must have passed by these District Magistrates on account of the directions issued by the State Government and the Central Government. For these reasons, the orders of detention, according to Mr. Pathak, were inspired by malice and, therefore, must be set aside. he emphasized that there was no possibility of any apprehension on the part of the District Magistrate, Poona, that the petitioner would repeat the performance attributed to him on the occasion of the function held on 12-11-64. If he wanted to repeat this activity he would have taken part in the Shradha ceremony held on 15-11-64.

(9) On the other hand, the learned Government Pleader, for the State, contended that the function held on 12-11-64 was a public function. although invitation cards were issued and sent to a few persons and in that sense, the function was restricted to the invitees, as many as 125 to 150 persons attended the function. The fact the publicity was given in the newspapers is also indicative of the function being attended by persons other than the invitees. He, therefore, argued that the District Magistrate had ample opportunity of getting an authentic report of what had transpired at this meeting. It may be mentioned that after the case was argued and was adjourned to another day with a view to enable the Government Pleader to sound the Government whether it was prepared to release the petitioner and other detenus by reason of the fact that considerable time has elapsed between the orders of detention and the date of hearing and that passions might have cooled down on account of the lapse of itme, the District Magistrate has put in an additional affidavit in which he has stated that he had obtained information from the persons who were present at the functions held on 12-11-64 and 15-11-64. The learned Government Pleader contended that the argument based on malice is without any foundation, since the District Magistrate has asserted that he passed the order after applying his own mind to the material placed before him. The State Government has also supported the

stand taken by the District Magistrate on this point. The Government Pleader frankly stated that his case was that the District Magistrate took action against the petitioner and others on the material that was placed before him relating to the activities of the petitioner in connection with the two functions held on 12-11-64 and 15-11-64 and the speeches delivered on these two occasions and their after-effects. He argued that even so the orders of detention are well founded.

(10) We will first deal with the question as to whether there was material before the District Magistrate on the basis of which he could be satisfied about the need of passing the order of detention against the petitioner. In that context, it is necessary to deal with the question whether the meeting held on 12-11-64, was a private meeting and if so, in what sense it was a private meeting. Now, the meeting was held not in the house of one of the friends and admirers but was held in a Karyalaya, which is a public place available for anyone on payment of rent. It is true that invitation cards were issued, presumably, to the circle of friends. It is noteworthy that M. G. Ghaisas, in his petition (No. 675 of 1965, which is also being heard along with this petition) has asserted that invitation cards were sent to about fifty persons. It is however an admitted fact that as many as 125 to 150 persons were present on this occasion. Again, the invitation cards issued were somewhat elastic, in that they asked the invitees to bring their friends with them. That appears to be the reason why although invitations were confirmed to fifty persons as many as 125 to 150 persons attended the function. It is not the case of the petitioner that this was a close door meeting, nor has it been stated anywhere that no member of the public other than those invited was present on this occasion. It is true that the District Magistrate has not stated in his affidavit that any police officer was present at this meeting. We will deal with this aspect of the matter presently. For the time being, we are restricting ourselves to the question whether the meeting was strictly a private meeting in the sense that members of the public had no access to the same. Considering all the circumstances of the case, we are inclined to the view that although the meet was not open to the public in general, still there was no prohibition for the members of the public coming in and attending the meeting. The very fact that as many as 125 to 150 persons attended the meeting shows that the gathering was sufficiently large. It was large enough for leakage of the information as to what transpired at the meeting. The question is important from more than one point of view. If it was strictly a private meeting then there was no likelihood of authentic information reaching the District Magistrate. It is necessary to note that two rival versions have been placed about the contents of the speech delivered by the petitioner on this occasion. Now, a person who has attended the meeting would alone be able to speak about the veracity of one or the other version. It would not be proper for the District Magistrate to act merely on a rumour or a gossip in regard to the speech or on a version of the speech placed before him by interested persons. He must see or hear the speeches himself. It must see or hear them through some medium. If the medium is distorted, the view

formed by it also would be distorted. It is equally necessary that the Court is satisfied that the detaining authority had an access to the place of the meeting and was in a position to get fair and authentic report. For instance, if the meeting has takes place in a place such as a house, the question of possibility of access would be of decisive importance. The house of an individual is a fortress for himself. If a conversation takes place between the husband and the wife and in the course of such conversation the husband strongly criticises the Government, there is very little possibility of the District Magistrate getting any authentic information in regard to that conversation. If a servant or a neighbour overhears such a conversation and makes an exaggerated report about the same to the District Magistrate, the question would arise whether the material on which the District Magistrate acted was proper material or tainted. To subscribe to the vireo that it would be open to the District Magistrate to act upon any late that has been carried to him would be to subscribe to the rule of Gestapo in place of the rule of law. At one stage, the learned Government Pleader contended that it was open to the District Magistrate to act upon any material that has been placed in his hand and he is not bound to disclose the source from which material was derived, not is he bound to disclose the nature of the material . The learned Government Pleader went so far as to say that the District Magistrate need not satisfy the Court that he was in a position to secure correct information. the instance cited above would expose the weakness of the extreme position taken up by the Government Pleader. it appears that this weakness was realised and in the second affidavit put in by the District Magistrate, it has been clearly mentioned that the District Magistrate got the report from certain person who attended the meeting. Mr. Pathak complained that the statement of the District Magistrate that he got the report from the persons who attended the meeting is very vague and it was necessary for the District Magistrate to disclose the names of the person who attended the meeting and conveyed information to him, so that it could be verified as to whether that person or persons were present on that occasion. It is, however, necessary to note that it is not open to us to consider the truth or otherwise of the version placed before us. All that is necessary for us to consider is whether there was authentic source from which the District Magistrate could gather information about the function and in particular the speech delivered by the petitioner. In view of the fact that the function was not strictly of a private character and also in view of the possibility of access to outsiders, it is not possible to hold that there was no authentic material on the basis of which the District Magistrate could pass the detention order.

(11) Mr. Pathak relied upon the decision of this Court in Bal Keshav Thakrey Vs. Commissioner of Police, Bombay and State of Bombay, . In that case, the Commissioner of Police in his affidavit had stated that the detenu, Keshav Sitaram Thakre, addressed a meeting held on 16-11-55 and made inflammatory remarks in the course of the speech. It transpired that Keshav Thakre was treated for cataract and was lying in bed on 16-11-55. It further transpired that

there was another meeting held on 20-10-55 at Curry Road, Bombay, which was addressed by Keshav Thakre. The commissioner of Police tried to explain that reference in the order to the speech made by Keshav Thakre on 16-11-55 was a typographical error and that he meant to refer to the speech made by Keshav Thakre in the meeting held on 16-10-55. This argument was rejected by the Court. The learned Chief Justice observed (at p. 492):

"In the absence of any material before us,. we must assume, indeed we must, that the material before the Commissioner of Police on which he made this order was the grounds furnished to the detenu and in these grounds what was mentioned was that at a meeting of 16-11-1955 the detenu made this inflammatory speech, and consequent upon that speech serious trouble broke out in Bombay on 21-11-1955. It is therefore, on these materials that the Commissioner of Police arrived at the satisfaction which the statute requires.

Can it possibly be said that that is a proper satisfaction which would justify the making of this order? When admittedly a most important material is placed before the detaining authority, which material now turns out to be a material which did not exist, then it cannot be said that the detaining authority applied its mind to all the relevant and proper circumstances which he must do before he makes the order".

In the course of the same judgment, the learned Chief Justice pointed out that the Commissioner of Police in his affidavit had not told the Court as to whether the material placed before him showed that the detenu had made the speech on the 16th of November or 16th of October. Nor any light is thrown on the rather unfortunate error of the date 16th of November being substituted for the 16th of October.

The last observation does indicate that it would be open to the Court to insist that the Court must be satisfied whether there was material before the District Magistrate on which he could be satisfied. At the same time, it does not follow that the District Magistrate must place the entire material before us. Had that been the real position in law, then it would mean that the Court had power of weighing the two versions and coming to a finding as to which of the two is true. If the Court is satisfied that the material did not exist, then certainly the Court can say that the satisfaction is illusory. Once it turns out that the material existed, in the same that it was possible for the District Magistrate to gather information about the contents of the petitioner's speech, then it is difficult to see how the Court can reject the version placed before the Court by the District Magistrate.

(12) Mr. Pathak referred to the article written by the petitioner as the editor of Kesari on 15-11-1949 under the title "National Victims of the sentence of hanging". The petitioner was prosecuted for this article under S. 23 of the Indian Press (Emergency Powers) Act, 1931, on the ground that the material contained therein was objectionable material. He was convicted and ordered to give

security in the sum of Rs. 3,000. The petitioner went in appeal and eventually, the matter was referred to a Full Bench. The Full Bench made a distinction between the sentence containing eulogy of the individual viz., Nathuram Godse, his devotion to duty, his simplicity of life etc. and the sentence eulogizing the act committed by him viz., the assassination of Mahatma Gandhi. The learned Chief Justice stated that admiration for the patriotism of the assassin is not the same thing as admiration for the act of assassination. The learned Chief Justice, at the same time, emphasized that while admiring the individual, it is necessary to point out that, that patriotism or love for the country was misguided. It was observed :

".It is true that in these two passages to which I have referred there is no clear indication that the ideal of devotion to the country and the discharge of his duty were both misguided and could not be justified."

At the same time, the learned Chief Justice pointed out that offending passages could not be read in isolation and must be read in the the context, and reading them in the context the learned Chief Justice came to the conclusion that the article did not contain words which directly or indirectly expressed approval or admiration either of the murder of Mahatma Gandhi or of Godse and Apte as the persons who committed the offence. Vide Full Bench judgment in Cr. Appln. No. 136 of 1950, decided on 13-4-1950 (Punj). Mr. Pathak argued that it is unlikely that the petitioner would express any views now, in variance with the views expressed by him in 1949 in the aforesaid article. In this connection, he stressed that the petitioner had grown older and had better experience of life. He was not, therefore, expected to say something which amounted to admiration of the act of assassination committed by Nathuram Godse. It has already been pointed out that the invitation cards used the word "patriot" with reference to Nathuram Godse. In the same way, at paragraph (13) of the petition, it is stated:

". . . .He (petitioner) also expressed that it was his misfortune that he could dissuade Nathuram Godse from the idea of murder of Gandhiji."

The article in Kesari suggested that the petitioner got an inkling as to what was passing in Nathuram Godse's mind from the speech he had delivered wherein he stated :

"Gandhiji wants to live for 125 years. I will see how he does so."

The affidavit filed by the District Magistrate alleges that the petitioner openly state that he had advance information about the plan of murdering Mahatma Gandhi. The sentence in paragraph (13) of the petition does not indicate that the petitioner had gathered from Nathuram Godse's speech that he might possibly indulge in any untoward act. The sentence cited above indicates that the petitioner had some more definite information about the same. In the context of the article written by the petitioner in Kesari and in the context of the sentence at paragraph (13) of the petition cited above, it is difficult to hold that the version set out by the District Magistrate is so utterly improbable as to be

completely ruled out as untrue. In any case, as stated above, it is not the function of this Court to enter in to the truth or otherwise of the rival versions before it. It is sufficient if the Court is satisfied that the District Magistrate could get information from some persons who had access to the meeting. As pointed out above, there were as many as 125 to 150 person present on the occation. In all probability, the correspondent of the Indian Express newspaper was also present. The learned Government Pleader showed us a number of photographs, taken at the time when the petitioner was delivering the speech on this occasion. It was not just one snap photograph, but there were series of photographs, which appear to have been taken on that occasion. The photographs were also shown to Mr. Pathak. This shows that there were outsiders present and those outsiders were in a position to take photographs of the speaker viz., the petitioner, and some members who were sitting on the dias etc.

(13) The petitioner, in paragraph (13) of the petition, has stated that he mentioned at the meeting that he gave advance information of Nathuram Godse's idea to Shri B. G. Kher by a registered letter through the late Shri Balukaka Kanetkar, a veteran Congress leader of Poona. The district Magistrate has denied that the petitioner had said anything of the kind. Mr. Pathak contended that the State Government ought to have come forward with a denial that the letter was sent by the late Balukaka Kanetkar to the late B. G. Kher, the then Chief Minister of Bombay, and since the State Government is not prepared to say so, the statement contained in paragraph (13) of the petition must be accepted as true. From this it follows, so Mr. Pathak argues, that far from acquiescing in the plan for assassinating Mahatma Gandhi, the petitioner took whatever step was possible for him to take for preventing the happening of that untoward event. We find it difficult to accept this line of reasoning. It is true that the State Government is silent on the question as to whether any letter was received by the then Chief Minister from the late Balukaka Kanitkar. At the same time, we cannot forget that the statement contained in paragraph (13) of the petition viz., that a letter was written to B. G. Kher through the late Balukaka Kenetkar, is vague. It does not necessarily convey the idea that the letter was addressed to B. G. Kher in his capacity as the Chief Minister of the State. In addition to being the Chief Minister, B. g. Kher was also a prominent member of the Congress organisation. It is possible that Balukaka Kanitkar, who was also a congressman, wrote a letter to B. G. Kher in his capacity as a congressman. Whatever that may be, the District Magistrate having denied the correctness of the statement, which the petitioner has attributed to himself. it is not possible to hold that the petitioner had made it clear to his audience that he did not like the idea of Nathuram Godse contemplating the murder of Mahatma Gandhi.

(14) Mr. Pathak contended that the past record of the petitioner is clean ; that the petitioner has rendered service to the country in various capacities including the offering of Salt Satyagrah and that at any rate since 1957 he retired from active politics. He also pointed out that the occasion of Satyavinayak Mahapooja was a unique one and there was no question of its repetition. The Mahapooja was

performed on account of the release of Godse and Karkare and such an occasion cannot repeat itself. Mr. Pathak's argument, therefore, was that one speech could not afford sufficient material on which the District Magistrate could form an opinion that the petitioner, if left free, would indulge in activities prejudicial to the defence of India or the public safety or the maintenance of public order. No inference can be raised from a solitary act and there must be a series of acts committed in the past on the basis of which alone it is safe to draw an inference about the possibility of the petitioner indulging in prejudicial activities. Mr. Pathak relied upon certain observations in some of the judicial pronouncements. He referred to the observations of Kania C. J. in *A.K. Gopalan Vs. The State of Madras*, to the following effect (at p. 43) :

"... . For preventive detention action must be taken on good suspicion. It is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period."

He also referred to the following observation of the Supreme Court in *Bhim Sen For R.S. Malik Mathra Das and Others Vs. The State of Punjab* :

"In our opinion, the High Court approached the matter quite correctly. Instances of past activities are relevant to be considered in giving rise to the subjective mental conviction of the District Magistrate that the appellants were likely to indulge in objectionable activities."

As a general rule, in order to afford a proper basis for drawing a correct inference about the possible course of conduct of a detenu, it is necessary to take into account the detenu's past conduct. From his actions in the past it is possible to draw an inference that he would repeat similar acts in future. The process evidently is an inductive process based on past experience. The saying that one swallow does not make a summer is pregnant with meaning. That does not, however, mean that in no case it is possible or open to the detaining authority to form an opinion about the possible course of conduct of the detenu from a solitary instance. If the instance is of a glaring character, then it may afford a basis for drawing an inductive inference about the future course of action likely to be pursued by the detenu. For instance, if a detenu has made a speech advocating the overthrow of the Government by violent means and has exerted the gathering to take recourse to direct action, that one speech could form a solid basis on which the detaining authority could take action. It cannot, therefore, be postulated as a proposition of law that in no case action can be taken by the detaining authority on the basis of one instance or one speech. It is true that the occasion such as the performance of the Mahapooja on account of the release of Godse and Karkare would not be repeated. It is also true that the petitioner did not participate in the function celebrated on 15-11-1964. The District Magistrate has stated that the fact that the petitioner did not attend the function held on 15-11-64 is a matter of coincidence. This statement is obviously of an inferential character. The Govt. Pleader explained that what the District Magistrate meant to convey was that by reason of the fact that the petitioner has

sympathies for the cause and holds admiration for Nathuram Godse, he would not have failed to attend the second function, and since he did not attend it, this must be attributed to some fortuitous event. If the District Magistrate felt that it was not unlikely that similar speeches would be delivered in future and that it was necessary to prevent the occurrence of such speeches. It is impossible to hold that the opinion formed by the District Magistrate was without foundation or without reason.

(15) Mr. Pathak then pointed out that the petitioner has been detained for three reasons viz., to prevent him from acting in a manner prejudicial to (1) the defence of India, (2) the public safety and (3) the maintenance of public order. He contended that one of the reasons viz., that the petitioner had acted or was likely to act in a manner prejudicial to the defence of India, does not and cannot exist in the present case. Mr. Pathak pointed out that the petitioner is a nationalist and owes no allegiance to any foreign country. The defence of the land is a matter of vital concern for him. It is, therefore, impossible to imagine that he would carry on any activities, which would prejudice or hamper the defence of the country. Basing himself on this premise, he argued that if one of the grounds the defence of India, turns out to be non-existent, then the entire order of detention becomes vitiated. According to the learned Government Pleader the activities, such as the delivery of speeches praising Nathuram Godse for the assassination of Mahatma Gandhi are likely to be repeated and there is every possibility of the law and order in Poona and the whole of Maharashtra coming into Jeopardy. In this context, he referred to the fact that in 1948 communal violence erupted on a large scale in the whole of Maharashtra. Reference has been made to this aspect in the judgment of the Full Bench of this Court referred to above. It is stated:

". He (the petitioner in his article in Kesari) also refers to various unfortunate incidents that resulted upon the death of Mahatma Gandhi, when a section of the people took it into its head to punish another section, which, they though, was associated in some way or the other with the death of the Father of the nation."

It is true that the District Magistrate has not referred in his affidavit to the events, which occurred in 1948, nor to the possibility of occurrence of similar events as a result of the petitioner's speech. It may, however, be mentioned that the District Magistrate in his affidavit filed in reply to the petition made by Gopal Godse (Cri. Appln. No. 367 of 1965 (Bom)), which was decided by the Division Bench comprising V. s. Desai & Bal, JJ., had, in effect stated as follows:

"The acts of the petitioner on the 12th and 15th November gave rise to consequences which disturbed public peace and order. His acts, therefore, were prejudicial to the maintenance of public peace and order".

It may further be pointed out that the District Magistrate Ahmednagar, in his affidavit in Criminal Appln. No. 674 of 1965 (Bom) filed by Vishnu Karkare which

is heard along with this petition, has stated at paragraph (10) as follows:

"The petitioner and his friends made speeches at this function justifying the assassination of Mahatma Gandhi and praising Nathuram Godse for the same. This function was not a merely family function. It was a public function specially organised by the friends and admirers of Nathuram Godse. These two functions of the 12th and 15th November 1964, evoked considerable wrath among all sections of the people and the press in the State. Several Public meetings were held to condemn these attempts to glorify Nathuram Godse and other assassins as martyrs. The atmosphere of Poona and Ahmednagar was surcharged with anger and tension and there was every possibility and a grave danger of repetition of the disturbances and riots that followed the assassination of Mahatma Gandhi in 1948."

The Government Pleader, therefore, contended that his possibility of communal violence was taken into account by the District Magistrate in passing the order of detention. If any such violence occurred, the Government Pleader argued, the efforts at mobilisation of the defence resources would be hampered. Every fraction of the military power must be available for the defence of the country during times of emergency. He pointed out that Poona is a place of strategic importance. There is a big ordinance factory situated near Poona and a large military force has been stationed at Poona. The help of the military would have to be requisitioned in case of repetition of communal violence on a large scale. Thus, according to him would affect the defence of India and out military preparedness to meet the challenge posed by external aggression.

(16) As reply to the above arguments, Mr. Pathak contended that the train of consequences suggested by the Government Pleader was far fetched, remote and not intimately connected with the activity indulged in by the petitioner. He argued that the connection between the activity and prejudice to the defence must be direct, proximate and intimate. The nexus between the two must be reasonable and rational and not fanciful. In that connection, he referred to the decision of the Federal Court in *Rex v. Basudeva* AIR 1950 PC 67. The facts in that case were:

Basudeva was a dealer in kerosene oil which is an essential commodity. The Provincial government was satisfied that the respondent habitually indulged in black marketing. He was arrested on 19th December 1948 and ordered to be detained in exercise of the powers conferred by section 3(1) (I) of the U. P. Prevention of Black-Marketing (Temporary Powers) Act. The High Court set aside the order and released him. Appeal was preferred by the government to the Federal Court. The Advocate General urged that habitual black-marketing in essential commodities was bound sooner or later to cause a dislocation of the machinery controlled distribution which, in turn, might lead to breaches of the peace and that, therefore, detention with a view to prevent such black-marketing was covered by the entry.

The learned Judge in reply to the above argument observed (at p. 68):

"It is true that black-marketing in essential commodities may at times lead to a disturbance of public order, but so may, for example, the rash driving of an automobile or the sale of adulterated foodstuffs. Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of Entry I of list II. The c connection contemplated must in our view, be real and proximate, not farfetched or problematical."

This proposition was accepted as correct by the Supreme Court in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, . Subbarao J who delivered the judgment of the Court, says (at p. 836) (of SCR) : (at p. 640 of AIR):-

"The decision (in AIR 1950 PC 67), in our view, lays down the correct test. The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate c connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order".

There is some substance in the argument advanced by Mr. Pathak viz., that the c connection between the activities of the petitioner and the defence of India is not quite intimate or direct. At the same time, it is difficult to say that the c connection between the two is too remote or too tenuous. What would have been regarded as a remote c connection in times of normalcy may not be so remote during times of emergency. Difference between nearness and remoteness may become only a difference of degree and not of kind. A breach of peace in one part of the country may hamper the defence of India as a whole. Assuming that the c connection is somewhat remote and indirect, the question that will have to be considered is whether merely because one of the purposes for which the detention has been ordered is not directly served, the entire order of detention in which the order purposes have been mentioned can be treated as a invalid. Mr. Pathak relied upon the decision of the Supreme Court in *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, , in which the Supreme Court held;-

"Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based, if some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order or grounds, would be to substitute the objective standards of the Court for the subjective satisfaction

of the statutory authority."

It is significant that in that case it was found that one of the grounds was completely non-existent. In the present case, it is not possible to conclude that the found of the defence of India is totally irrelevant or non-existent. At best the c connection between the activities of the petitioner and the defence of India is somewhat indirect and circuitous. In the same judgment, their Lordships have added the caution in the following words (at p. 165):

"In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders".

All that need be considered so far as the question of the defence of Inida, which is one of the grounds mentioned in the order of detention, is concerned is, whether that ground has a rational probative value or whether it is completely extraneous. There can be no doubt that the other two grounds mentioned in the order of detention viz., public safety and public ortder, have a direct c connection with the activities of the petitioner as envisaged by the District Magistrate on which he left satisfied that it was necessary to detain the petitioner. According to us, the third ground viz., that the activities of the petitioner are prejudicial to the defence of Inida, can be reasonably connected with it, though in somewhat indirect manner. In our view, therefore, the order of detention does not become invalid on that ground.

(17) Mr. Pathak then argued that the argument advanced by the Government Pleader viz., that a section of the people would take the law in their own hands and thus there will be an orgy of communal violence resulting in breach of peace is fallacious. He argued that the District Magistrate must come to the conclusion that the activities of the petitioner would lead to the breach of public order or prove to be prejudicial to the maintenance of public safety. He contended that the activites of the petitioner are thoroughly legal and if certain section of the people gets enraged over his activities and decides to break law and order, proper course for the District Magistrate would be to employ sufficient force for meeting the threat to public order offered by that section. In support of this argument, he relied upon the leading case in Beatty v./ Gillbanks (1882) 9 QBD 308. what had happened in the case was as follows;

The appellants assembled with others for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it.

It was held that they could not be rightly convicted of an unlawful assembly. Prof.

A. v. Dicey in his famous book "The Law of the Constitution", 10th Edition, 1960, has referred to this case and has made the following observations: (At p. 274)

". The plain principle is that "A's right to do a lawful act, namely, walk down the high Street, cannot be diminished by X's threat to do an unlawful act, namely to knock "A" down. This is the principle established, or rather illustrated, by the case of *Beatty v. Gillbanks* (1882) 9 QBD 308. the salvation Army met together a Western-super mare with the knowledge that they would be opposed by the Skeleton Army. The Magistrates had put out a notice intended to forbid the meeting. The Salvationists, however, assembled, were met by the police, and told to obey the notice. X, one of the members declined to obey and was arrested. He was subsequently, with others, convicted by the magistrates on a summary charge of unlawfully assembling in breach of the peace in a public thoroughfare and bound over to keep the peace. it was an undoubted fact that the meeting of the Salvation Army was likely to lead to an attack by the Skeleton Army, and in this sense cause a breach of the peace. The conviction, however, of X by the magistrates was quashed on appeal to the Queen's Bench Division."

Dicey then cited the following passage from the judgment of the Queen's Bench Division with approval: (At p. 275)

"What has happened here, says Field J., is that an unlawful organisation (the Skeleton Army) has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justice amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition".

At p. 276, Dicey has quoted a sentence from the judgment of O'Brien J. in the *Queen v. Justice of Londonderry* to the following effect:

"If danger arises from the exercise of lawful rights resulting in a breach of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights".

The principle laid down in (1882) 9 QBD 308 is certainly unexceptional. The question in that case was whether by reason of the fact that breach of peace took place, the meeting which was lawful and which assembled for a lawful purpose would become an unlawful assembly. The learned Judges held that to hold so would be preposterous. As a matter of fact, the Magistrates had convicted the members of the assembly which had met for a lawful purpose, on the ground that the assembly become unlawful. In the present case, we are not considering the question as to whether the petitioner should be punished for the activities indulged in by him. It is not suggested that the speech made by the petitioner contains anything which is punishable under the law of the land. Short of offending any express provision of law, the speech may be so objectionable as to offend the sentiments of the public or a section thereof. In such a case, the question is whether preventive action can be taken in the interests of the peace

of the land. Under certain circumstances, the peace of the land may be paramount and decisive consideration. In this connection, we may refer to the passage in Notes (a) and (b) to the decision in (1882) 9 QBD 308 in the famous book "Cases in Constitutional Law" by Keir and Lawson, 4th Edition, 1954, at pp. 407

"Note (a). the question then seems to be reduced to this ; assuming the plaintiff and others assembled with him to be doing nothing unlawful, but yet that there were reasonable grounds for the defendant believing as he did, that there would be a breach of the peace if they continued so assembled, and that there was no other way in which the breach of the peace could be avoided but by stopping and dispersing the plaintiff's meeting was the defendant justified in taking the necessary steps to stop and disperse it? In my opinion he was so justified, under the peculiar circumstances stated in the defence, and which for the present must be taken as admitted to be there truly stated. Under such circumstances the defendant was not to defer action until a breach of the peace had actually been committed. His paramount duty was to preserve the peace unbroken and that, by whatever means were available for the purpose. Furthermore, the duty of a Justice of the Peace being to preserve the peace unbroken he is, of course, entitled, and in part bound, to intervene the moment he has reasonable apprehensions of breach of the peace being imminent; and; therefore, he must in such cases necessarily act on his own reasonable and bonafide belief,as to what is likely to occur. . . .

Note (b). But, assuming this to be the law, the jurisdiction can only be exercised when some facts are proved from which it can be reasonably inferred that there was actual danger of the peace being broken, or of a crime being committed and that such danger was, in some intelligible way, the consequence of the conduct of the person required to give the sureties"

According to the District Magistrate, the speech delivered by the petitioner was objectionable and in a sense inflammatory. to refer to Nathuram Godse as a patriot and to eulogize him for the act committed by him cannot be treated as a legal or an innocuous activity. It may be that it is possible to make a distinction between the eulogy of the assassin for his individual qualities and the eulogy for the act done by him or the praise of the act itself. But, that distinction can be made by people of intelligence, ability and subtlety. It is difficult for the ordinary people to understand the subtle distinction between the two positions. Now, if as a result of the indiscriminate praise of Nathuram Godse, the assassin of Mahatma Gandhi, the District Magistrate apprehends that breach of the peace was likely, would it be proper to fall back upon the principle laid down in (1882) 9 QND 308 or Diecy's exposition of the law of public meeting. The action taken by the District Magistrate is of a preventive character. the very essence of the action if to forestall the happening of untoward incidents. In taking this action the District Maigstrate is not concerned only with the legalistic aspect of the activities of the petitioner. Even if the activites do not infringe any law, but at the same time are

deter mental to public peace, it would be legitimate for the District Magistrate to have recourse to the same. The legislature has given ample discretion to the District Magistrate for taking preventive action. As soon as he comes to the conclusion that the activities of the detenu are prejudicial for the defence of India or the maintenance of public order or public safety it would be open to him to pass an order for detention. The version of the speech as given by the district magistrate is not liable to be challenged in a Court of law and the court has no power to go behind the same. Again, it is difficult to characterise the speech as wholly harmless. If that is so, then it is for the District Magistrate to form an opinion as to whether as a result of the speech and the activities of the organisers there was danger to public safety or public order or even to the defence of the country.

(18) That takes us to the last point urged by Mr. Pathak viz., that the detention order was actuated by malice. Mr. Pathak suggested malice in fact as also malice in law as being responsible for the action taken by the District Magistrate. In this connection, he pointed out that the District Magistrate of Poona and Ahmednagar has passed the orders of detention on the same day i.e., 24-11-1964, and as many as eleven persons were kept detained by these orders. According to Mr. Pathak the fact that simultaneous action was taken by the two District Magistrates is indicative of a central direction and a central plan. Mr. Pathak also pointed out that no action was taken on 24-11-64. In Criminal Appln. No. 674 of 1965 (Bom) filed by Vishnu Karkare, the District Magistrate of Ahmednagar has put in his affidavit stating that his predecessor had received a report relating to the fact that an atmosphere of tension prevailed in the districts of Poona and Ahmednagar on account of the activities of the petitioner and, therefore, he apprehended that there was likelihood of repetition of the events of 1948. Mr. Pathak contended that if at all the District Magistrate of Ahmednagar had received such a report, he would get it from the District Superintendent of Police, Poona or the District Magistrate, Poona. He also referred to the questions put in the State Assembly and also in the Parliament and the replies thereto and according to him this clearly shows that there was a central direction so far as the orders of detention passed against the eleven petitioners are concerned. He also set out other grounds from which, according to him, malice could be referred. But, before dealing with them we will dispose of the first line of attack in this regard. In considering the question of mala fides. It is necessary to remember that the burden of establishing malice or mala fides lies upon the petitioner in AIR 1945 18 (Federal Court) learned Judges have cited with approval a passage from the judgment of Viscount Maugham to the following effect; (At p. 20)

"Once the order is proved or admitted, it must be taken prima facie, this is, until the contrary is proved, to have been properly made and that the requisite as to the belief of the secretary of State (here, the Governor) was complied with."

The learned Judges observed: (AT p. 20)

"It was no doubt open to the detenu to show that the order was not in fact made. the Governor of Bihar or that it was a fraudulent exercise of the power. The observations in (1942) AC 206 and (1942) AC 284 establish that the burden of substantiating these pleas lies on the detenu."

The mere fact that orders of detention were passed by the District Magistrate of the two Districts on the same date by itself is not sufficient to show that these orders were the result of any direction from the State government. It is an admitted fact that publication of the reports of the petitioner's speech created a commotion and agitated questions were asked both in the State Assembly and the Parliament. It is, therefore, quite likely that the District Magistrate of Poona as also of Ahmednagar started making enquiries in these matters and sought reports regarding the correct position prevailing in the two districts. It is equally possible that the Inspector-General of Police asked the district Superintendents of Police of the various districts to assess the situation and make reports to their respective District Magistrate. It is also possible that the District Superintendents of Police of the various districts exchanged notes and information as between them. We are not, therefore prepared to countenance the argument that the orders of detention passed by the District Magistrates of Poona Ahmednagar were due to central direction of the State Government or of the Union Government of that pressure was brought to bear upon them by certain individuals.

(19) Mr. Pathak pointed out that the Union Government has appointed a one-man Commission presided over by G. S. Pathak an eminent jurist, to make an inquiry into the correctness or otherwise of the report viz., that the petitioner's speech showed that he had prior knowledge about the plan of Mahatma Gandhi's assassination. N. G. Abhyankar, who is also a detenu and who also filed an application (No. 614 of 1965) which is heard along with this petition, in his petition at paragraph (5) has set out the terms of reference of Pathak Commission in the following words:

"Moreover, the Government of India's declaration dated 25-3-65 confirms that appointment of one-man Commission of shri G. S. Pathak is made to enquire whether the persons and in particular G. V. Ketkar of Poona had prior information of the conspiracy of Nathuram Vinayak Godse and others to assassinate Mahatma Gandhi and whether any such persons have communicated the said information to any authorities of the Government of Bombay or the Government of India and if it was so, what action was taken by the Government of Bombay and Government of India on the basis of the above information". . According to this averment, the purpose to be served by the inquiry to be instituted by G. s. Pathak is twofold; (1) to ascertain whether any persons or in particular, G. V. Ketkar had any prior information about the conspiracy to murder Mahatma Gandhi, and (2) whether such persons (including the petitioner) had communicated the said information to any of the authorities of the Government of Bombay or the government of India. Mr. Pathak's argument was that the

appointment of the Commission to make an inquiry into the above allegations is just an eye-wash. The Union Government is not serious to complete the inquiry. He suggested that both the State Government and the Union Government felt embarrassed by the disclosures contained in the petitioner's speech viz., that he had communicated the information to B. G. Kher, the then Chief Minister of Bombay. According to him, one of the reasons for taking action against the petitioner and others was to shift the blame for their failure to take proper action to prevent the assassination of Mahatma Gandhi and the other was to divert public attention from that fact. According to Mr. Pathak, the Commission has not started its work so far. He pointed out that no notice has yet been served on the petitioner or anyone else regarding the sittings of the commission. Mr. Pathak argued that one of the objects in keeping the petitioner and others in detention is to prevent them from putting forth their case before the Pathak Commission. In our view, all these arguments are speculative and beside the point. The Commission has been appointed by the Union Government. The object of the inquiry has nothing to do whatsoever with the detention of the petitioner and others. The principal object of the inquiry as stated by Abhyankar one of the detenus, is to ascertain whether the petitioner had any prior knowledge or information about the conspiracy to murder Mahatma Gandhi and if so, whether he had taken any steps in preventing the same being fructified by communicating the information which he had at his disposal. It is possible that if the Pathak Commission recorded a finding in favour of the petitioner viz., that he had no definite information as such but that he had inferred from certain speeches of Nathuram Godse that he was likely to commit the assassination of Mahatma Gandhi and that having been scared by the mere possibility of any such thing heppening, he forwarded the information to the then Chief Minister, B. G. Kher, then the Government may reconsider the question of the petitioner's detention. From that point of ivew, it can be said that it would have been better if the commission had started its work and completed its inquiry earlier. But neither the District Magistrates of Poona and Ahmednagar nor the State Government have control over the Commission appointed by the Union government. Even the State Government cannot ask the Commission to expedite its work. It is doubtful whether the Union Government can call upon G. S. Pathak to expedite the inquiry. The order of detention was passed as far back as 24-11-64 and the declaration about the appointment of the Commission of Inquiry was made by the Union Government on 25-3-1965. We have not been able to appreciate at all that there is any c connection or nexus between these two events. We do not, therefore, think that there is any substance in the allegation that the detention is malicious.

(20) The alternative line of argument viz., that the State and the Central Government felt embarrassed by the disclosures made by the petitioner, also does not appear to us to be sound or having any c connection with the bonafides of the order of detention. In this connection, it may be noted that in his article in Kesari dated 15-11-1949, the petitioner, after stating that Balukaka Kanetkar

drew the attention of the then Chief Minister of Bombay to Nauram Godse's statement that he (Godse) would not allow Gandhiji to live for 125 years stated:

". . . . No action was taken because both the Chief Minister and the Home Minister had great faith in Gandhiji's power to pacify his extremist opponents, and they thought nothing serious was intended by these words and nothing serious would come about".

(Vide Full Bench judgment) in Cri. Appln. No. 136 of 1950, d/- 13-4-1950).

Again, had it been true that the State and the Central Government had felt embarrassed by the disclosures, the Central Government would not have asked the commission of Inquiry to investigate the question as to whether the petitioner and others had communicated the said information to the authorities of the Government of Bombay or the Government of India, It is true that the State Government has not traversed the allegation made in the petition viz., that the late Balukaka Kanetkar communicated the information by a registered letter to the late B.G. Kher, the then Chief Minister of Bombay. We have already pointed out that this may be due to this ambiguity of the statement viz., whether the information was communicated to B. g. Kher in his capacity as the Chief Minister or in his capacity as a Congress leader. whatever that may be, we do not think that there is any connection between the orders of detention passed by the District Magistrates of Poona and Ahmednagar and the question of disclosure or non-disclosure of the information by the petitioner and other to any of the authorities . The District Magistrate has emphasized that he examined the material himself, considered the activities of the petitioner and then came to his own conclusion that it was necessary to detain the petitioner. he has denied that he was in any way influenced either by the State Government or the Union Government. In this connection, it may be pointed out that although 125 to 150 persons who attended the function of 12-11-64 and out of 250 persons or so who attended the function of 15-11-64, only eleven have been kept detained so far. That shows that the action of the District Magistrate is not indiscriminate and has been taken after careful consideration of the merits of the case of each individual. There is, therefore, no substance in this application. The application fails and the rule is discharged.

(21) Before concluding, we may point out that we had suggested to the Government Pleader to consult the Government whether it is prepared to reconsider the case of the petitioner and others in view of the fact that the detenus expressed their readiness to give an assurance to the Government that they would not repeat such activities and that seven or eight months have elapsed after the petitioner and others have been detained. It is possible that the passions that were roused on account of the two functions and the speeches delivered on those occasions might have died down or at least might have considerably cooled down. The Government Pleader after consulting the State Government reported to us that the Government was not prepared to reconsider the position at this juncture. Although the Government has not thought it fit to

review the position of the petitioner and other detenus at this juncture, we hope that at an appropriate moment the Government would reconsider the whole position and see whether in view of the changed conditions, it is necessary to keep the petitioner and others in continued detention. In this connection, it may be pointed out that our suggestion to the Government was prompted by the readiness expressed by the petitioner and others to give an assurance that they would not indulge in similar activities or embark upon functions similar to those held on the 12th and 15th November 1964. They have reiterated their readiness and added that they would refrain from saying anything which would amount to direct or indirect praise of Nathuram Godse and his associates. We have asked the Government Pleader to convey to the government the assurances given by the petitioner and others and their readiness to give undertakings in any form to the Government in that regard. As stated above, our suggestion to the Government Pleader arose out of the offer of assurances given by the petitioner and others. We are assured that the petitioner and others are ready to give written undertakings to the Government in this regard. The petitioner, Ketkar, also stated that he was prepared to stay outside the district of Poona for a period of an year or so. We feel confident that the Government would take into account the change in the circumstances and the assurances given by the petitioner and others. We have no doubt in our mind that the Government would, not do anything which would lay itself open to the charge that its action is motivated by political vendatta. We would suggest to the Government Pleader to send a copy of this judgment to the Government for such action as it may deem necessary in the light of these observations.

(22) Rule discharged.