

(2015) 01 GUJ CK 0097

In the Gujarat High Court

Case No : Special Civil Application No. 536 of 2015

Karan Sarmanbhai Jadeja

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 161
Gujarat Prevention of Anti-social Activities Act, 1985 — Section 2(c), 3, 3(1), 3(2)
Penal Code, 1860 (IPC) — Section 114, 323, 324, 504

Citation : (2015) 2 GLR 1804

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : B.M. Mangukiya and Bela A. Prajapati, for the Appellant

Final Decision : Allowed

Judgement

J.B. Pardiwala, J—By this writ-application under Art. 226 of the Constitution of India, the petitioner seeks to challenge the legality and validity of his detention under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Gujarat Act No. 16 of 1985) (for short, "the P.A.S.A. Act") pursuant to the order dated 6th January, 2015 passed by the District Magistrate, Porbandar, in exercise of his powers under Sec. 3(1) of the P.A.S.A. Act. It appears from the materials on record that the petitioner has been detained as a "dangerous person". He prays for a writ of habeas corpus. Mr. B.M. Mangukiya, the learned Advocate while inviting my attention to the order dated 6th January, 2015 and the grounds stated therein, urged that the recording of the subjective satisfaction is necessary for the preventive detention. The detention, with a view to prevent a person from acting in any manner prejudicial to the maintenance of the public order, is a condition precedent for the exercise of power under sub-sec. (1) of Sec. 3 of the said Act. He invited my attention to the order of detention and the grounds and urged that there is no subjective satisfaction recorded in the said order. He urged that from the grounds, it appears that the applicant was-ordered

to be prevented/detained due to the alleged criminal behaviour of me applicant, and due to great fear in the mind of the people at large about their safety. He urged that even in the grounds of detention, there is no subjective satisfaction recorded that the petitioner being a dangerous person, his activities are prejudicial to the maintenance of the public order. He pointed out that one solitary case registered on 4th September, 2014, at the Kamlabaug Police Station, vide C.R. No. 1-115 of 2014 of the offence punishable under Sees. 324, 323, 504 read with Sec. 114 of the Indian Penal Code, 1860 has been taken into consideration. He invited my attention to the relevant part of the grounds of detention, wherein the Detaining Authority has relied upon the in-camera statements of witnesses A and B. He pointed out that the satisfaction of the Detaining Authority about the truthfulness of the in-camera statement has not been recorded. He has also alleged mala fides on the part of the authority by making averments in the memo of the petition that the detenu happens to be the son of late Santokben Jadeja. The late Santokben Jadeja was elected as an independent candidate in the year 1992 from the Kutiyana Constituency as the Member of me Gujarat Legislative Assembly. The elder brother of the detenu Mr. Kandhal Jadeja was also elected as a Member of the Legislative Assembly from the Kutiyana Constituency in the elections of the Gujarat Legislative Assembly, which were held in the year 2012. It is alleged that since the brother of the detenu is a Member of the Legislative Assembly affiliated with the National Congress Party and holds high political influence over the people of Kutiyana, the detenu has been made a victim of such political rivalry.

2. Mr. Mangukiya submits that under the provisions of the said Act, the State Government is required to confirm/approve the order of the preventive detention. He urged that the Authority is required to apply its mind to me order of detention. He submitted that the order of detention does not record any subjective satisfaction of the Detaining Authority in terms of Sec. 3 of the said Act, and it is a matter of common experience that the State Government also, without any application of mind, grants approval to the same.

3. Mr. Mangukiya submits that the law is well settled so far as the preventive detention is concerned. According to Mr. Mangukiya, the mere registration of cases under the Indian Penal Code by itself is not sufficient to label a person as a dangerous person. According to Mr. Mangukiya, the power of preventive detention is being completely misused by the Authority. He would urge that in such circumstances, his detention even for a day, is not justified and permissible. In such circumstances, Mr. Mangukiya prays that the order of detention deserves to be quashed and the detenu be released froth with.

4. On the other hand, this application has been vehemently opposed by the learned A.G.P. appearing for the State. He has submitted that no error not to speak of any error of law could be said to have been committed by the detaining authority in passing the order of detention. He has submitted that there is nothing wrong about the decision-making process adopted by the detaining

authority. He also pointed out that no mala fides can be attributed to the detaining authority. He invited my attention to the grounds of detention and pointed out the extent of the prejudicial activities of the petitioner. He urged that in the light of the said prejudicial activities that the detaining authority passed the order of detention in a bona fide manner branding the petitioner as a "dangerous person". He urged that there being no merit in this application, the same be rejected.

5. The learned A.G.P., in support of his submissions, placed reliance on the decision of the Supreme Court in the case of Smt. Phulwari Jagdambaprasad Pathak Vs. Shri R.H. Mendonca and Others, AIR 2000 SC 2527 : (2000) CriLJ 3944 : (2000) 8 JT 209 : (2000) 5 SCALE 302 : (2000) 6 SCC 751 : (2000) 1 SCR 686 Supp : (2000) 2 UJ 1101 : (2000) AIRSCW 2727 : (2000) 5 Supreme 274 , and drew my attention to Para 16, which reads as under:

"Then comes the crucial question whether "in-camera" statements of persons/ witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under Sec. 3 of the Act. Preventive detention measure is a harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed."

6. The learned A.G.P., placing reliance on the aforesaid observations made by the Supreme Court, submitted that the in-camera statements have been accepted as a piece of strong circumstance.

7. Having heard the learned Counsel for the parties and having gone through the materials on record, the only question that falls for my consideration in this petition is, whether the order of detention deserves to be quashed.

8. The essential concept of the preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished to prove on proof of his guilt and the standard is proof beyond the reasonable doubt whereas in the preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Sec. 3 of the Act to prevent.

9. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (See *Haradhan Saha Vs. The State of West Bengal and Others*, AIR 1974 SC 2154 : (1974) CriLJ 1479 : (1975) 3 SCC 198 : (1974) SCC(Cri) 816 : (1975) 1 SCR 778).

10. "In Halsbury's Law of England, it is stated thus:

"The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiae. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."

11. In *Corpus Juris Secundum*, the nature of the writ of habeas corpus is summarized thus:

"The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the Court or judge awarding the writ shall consider in that behalf. "Habeas corpus" literally means "have the body". By this writ, the Court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo-Saxon Jurisprudence."

12. In Constitutional and Administrative Law by Hood Phillips and Jackson, it is stated thus:

"The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judges and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wide ranging statutory provision. It has been suggested that the need for the "blunt remedy" of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the Court may refuse relief on practical grounds; habeas corpus is a writ of right, granted *ex debito justitiae*."

13. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". "Habeas corpus" literally means "have his body". The general purpose of these writs as their name indicates was to obtain the production of the individual before a Court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the Court has no discretion to refuse it. "Unlike certiorari or mandamus, a writ of habeas corpus is as of right" to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Arts.

32 and 226 of the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Art. 226 or under Art. 32 of the Constitution of India.

14. It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish the person detaining and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention. It is issued in the form of an order calling upon the person who has detained another, whether in prison or in private custody, to "have the body" of that other before the Court in order to let the Court know on what ground the latter has been confined and must to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial. Habeas corpus is available against any person who is suspected of detaining another unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ be addressed to any person whatever—an official or a private individual—who has another in his custody. The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Art. 21 of the Constitution of India, which provides:

"21. Protection of life and personal liberty:--No person shall be deprived of his life or personal liberty except according to procedure established by law."

15. The Supreme Court on several occasions examined the concepts of "law and order" and "public Order". Immediately after the Constitution came into force, a Constitution Bench of the Supreme Court in the case of *Brij Bhushan and Another Vs. The State of Delhi*, AIR 1950 SC 129 : (1950) CriLJ 1525 : (1950) 1 SCR 605, dealt with a case pertaining to public order. The Court observed that "public order" may well be paraphrased in the context as "public tranquillity".

16. Another celebrated Constitution Bench judgment of the Supreme Court is in the case of *Romesh Thappar Vs. The State of Madras*, AIR 1950 SC 124 : (1950) CriLJ 1514 : (1950) 1 SCR 594. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called *Cross Roads* printed and

published in Bombay was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in the Supreme Court of India by filing a writ petition under Art. 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquillity and to create disturbance of public order and tranquility.

The Supreme Court observed:

"..."Public order" is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established...it must be taken that "public safety" is used as a part of the wider concept of public order...."

17. The distinction between "public order" and "law and order" has been carefully defined in a Constitution Bench judgment of the Supreme Court in the case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, AIR 1966 SC 740 : (1966) CriLJ 608 : (1966) 1 SCR 709 . In this judgment, His Lordship Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:

"...Does the expression "public order" take in every kind of disorder or only some? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State...."

18. In the case of Arun Ghosh Vs. State of West Bengal, AIR 1970 SC 1228 : (1970) CriLJ 1136 : (1970) 1 SCC 98 : (1970) 1 SCC(Cri) 67 : (1970) 3 SCR 288 , His Lordship Hidayatullah, J. again had an occasion to deal with the question of "public order" and "law and order". In this judgment, by giving various illustrations, very serious effort has been made to explain the basic distinction between "public order" and "law and order". The relevant portion reads as under:

"...Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even men it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from me act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by me criminal prosecution agencies. It means, therefore, that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society...."

19. The concept of "public order" and "law and order" has been dealt with in the

case of Pushkar Mukherjee and Others Vs. The State of West Bengal, AIR 1970 SC 852 : (1970) CriLJ 852 : (1969) 1 SCC 10 : (1969) 2 SCR 635 . In this case, the Supreme Court had relied on the important work of Dr. Allen on "Legal Duties" and spelt out the distinction between "public" and "private" crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished "public" and "private" crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

20. The Supreme Court in the case of Babul Mitra Vs. State of West Bengal and Others, AIR 1973 SC 197 : (1974) CriLJ 395 : (1973) 1 SCC 393 : (1973) SCC(Cri) 353 , had an occasion to deal with the question of "public order" and "law and order". The Supreme Court observed that the true distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question upon society. The Court pointed out that the act by itself is not determinant of its own gravity. In its quality, it may not differ, but in its potentiality it may be very different.

21. In Dipak Bose alias Naripada Vs. State of West Bengal, AIR 1972 SC 2686 : (1973) 4 SCC 43 : (1973) SCC(Cri) 684 , a three-Judge Bench of the Supreme Court explained the distinction between "law and order" and "public order" by giving illustrations. Relevant portion reads as under:

"...Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed. There is nothing in the two incidents set out in the grounds in the present case to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them from offering resistance. But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them."

22. In Kuso Sah Vs. The State of Bihar and Others, AIR 1974 SC 156 : (1975)

CriLJ 543 : (1974) 1 SCC 185 : (1974) SCC(Cri) 84 : (1974) 2 SCR 195 , the Supreme Court had also considered the issue of "public order". The Supreme Court observed thus:

"These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder...."

23. The Supreme Court in yet another important case of Ashok Kumar Vs. Delhi Administration and Others, AIR 1982 SC 1143 : (1982) CriLJ 1191 : (1982) 1 SCALE 459 : (1982) 2 SCC 403 : (1982) 3 SCR 707 : (1982) 14 UJ 485 , clearly spelt out a distinction between "law and order" and "public order". In this case, the Court observed as under:

"13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only, and therefore, touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not detrimental of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order...."

24. It has to be seen whether the detenu's activity had any impact on the local community, or to put it in the words of His Lordship Hidayatullah, J., had the act of the detenu disturbed the even tempo of the life of the community of that specified locality?

25. Mr. Mangukhiya, the learned Counsel further placed reliance on the decision of the Supreme Court in the case of Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, AIR 1986 SC 2090 : (1986) CriLJ 1959 : (1986) 3 Crimes 284 : (1986) JT 561 : (1986) 2 SCALE 531 : (1986) 4 SCC 416 : (1986) 3 SCR 905 . In this case, the Court observed as follows:

"7. It is well settled in our Constitutional framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence."

26. In The Commissioner of Police and Others Vs. Smt. C. Anita, (2004) 7 JT

355 : (2004) 7 SCALE 120 : (2004) 7 SCC 467 : (2004) 3 SCR 701 Supp : (2004) AIRSCW 4750 : (2004) 6 Supreme 487 , the Supreme Court again examined the issue of "public order" and "law and order" and observed thus:

"7. ...The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?"

This question has to be faced in every case on its facts."

27. In *R. Kalavathi Vs. The State of Tamil Nadu and Others*, (2006) 6 JT 69 : (2006) 6 SCALE 385 : (2006) 6 SCC 14 : (2006) 3 SCR 74 Supp , the Supreme Court while dealing with the case affecting the public order observed that even a single act which has the propensity of affecting the even tempo of life and public tranquillity would be sufficient for detention.

28. In *Darpan Kumar Sharma @ Dharban Kumar Sharma Vs. State of Tamil Nadu and Others*, AIR 2003 SC 971 : (2003) CriLJ 1222 : (2003) 1 CTC 382 : (2003) 1 JT 176 : (2003) 1 SCALE 325 : (2003) 2 SCC 313 : (2003) 1 SCR 442 : (2003) 1 UJ 413 : (2003) AIRSCW 463 : (2003) 1 Supreme 508 , the Supreme Court made the following observations:

"The basis upon which the petitioner has been detained in the instant case is that he robbed of one Kumar at the point of knife a sum of Rs. 1,000/-. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that the case of "Goonda" the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order." The question whether a man has only committed a breach of law and order or has

acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention."

"In the present case, the three alleged incidents to which the Commissioner of Police has referred to, are thefts arising under Sec. 379, I.P.C., and therefore, there is only a solitary instance wherein the detenu is alleged to have robbed of in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents."

29. Thus, from the various decisions of the Supreme Court referred to above, it could easily be said that the detaining authority has failed to substantiate that the alleged anti-social activities of the detenu affect adversely or are likely to affect adversely the maintenance of public order. It is true that there is a very thin line between the question of law and order situation and a public order situation, and some-times, the acts of a person relating to" law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior. Just because one case has been registered against the detenu of the offence under Sec. 324 of the Indian Penal Code and two in-camera statements have been recorded of the witnesses whose identity has not been disclosed, by itself do not have any bearing on the maintenance of the public order. The detenu may be punished for the offence which has been registered against him, but surely, the acts constituting the offence cannot be said to have affected the even tempo of the life of the community. It may be that the detenu is a "dangerous person" within the meaning of Sec. 2(c) of the

P.A.S.A. Act, but merely because he is a "dangerous person" he cannot be preventively detained under the P.A.S.A. Act, unless as laid down in sub-sec. (4) of Sec. 3 of the P.A.S.A. Act, his activities as a "dangerous person" affected adversely or are likely to affect adversely the maintenance of public order.

30. While this Court examines the legality and validity of the order of detention under Art. 226 of the Constitution of India, this Court has to examine the decision-making process. The order of preventive detention is an order of very drastic nature. The result of passing of an order of preventive detention is to deprive the detenu of his liberty without a trial. Therefore, the order of preventive detention cannot be passed in a casual and lighthearted manner. Passing an order of preventive detention involves careful application of mind and recording of subjective satisfaction on the basis of the materials on record that the grounds of detention provided by the Statute exists.

31. As observed by the Supreme Court in the case of Darpan Kumar Sharma @ Dharban Kumar Sharma Vs. State of Tamil Nadu and Others, AIR 2003 SC 971 : (2003) CriLJ 1222 : (2003) 1 CTC 382 : (2003) 1 JT 176 : (2003) 1 SCALE 325 : (2003) 2 SCC 313 : (2003) 1 SCR 442 : (2003) 1 UJ 413 : (2003) AIRSCW 463 : (2003) 1 Supreme 508 , that any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect the law and order, but the same need not affect the maintenance of public order. The foundation upon which the detenu has been detained in the instant case, is that he committed an offence under Sec. 324 of the I.P.C. and the same was registered at the Kamlabaug Police Station, vide C.R No. 1-115/14, coupled with the two in-camera statements of the witnesses whose identity has not been disclosed on the request made by those two witnesses. According to one of the witnesses, about two months back, he was travelling in his truck towards Porbandar. The detenu, at that point of time, was standing on the road with his car parked over there. The witness blew the horn of his truck, on account of which the detenu got enraged and pulled out the witness from his truck by catching hold of his hand. The witness has further stated that he was told by the detenu as to why he blew the horn. The witness has further stated that the detenu started beating him, on account of which the people carrying on business in their individual shops got frightened and ran away from their place of business. The second witness has stated that before two and a half months, he was travelling in his taxi and was heading towards Porbandar and at that point of time, the detenu and his associates were standing near oddar. The detenu asked the witness to stop his taxi. The witness was asked to get down from the car and the keys of the car were snatched away. There was an altercation, on account of which the detenu is alleged to have beaten the witness. He has stated that at that point of time, the other people passing through did not intervene as they were quite afraid of the detenu. By placing reliance on these two statements of the witnesses, whose identity has not been disclosed, the Detaining Authority has reached to the subjective satisfaction that the act of the detenu created a sense of alarm, scare

and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of the public order, which affected the even tempo of life of the community. The citation of these words in the order and grounds of detention is more in the nature of a ritual or a parrot like chant, rather than with any significance to the content of the matter. In my view, the two statements are as vague as anything. However, without going into the genuineness of such statements, even if I believe them to be true, in my view, the two instances narrated by the witnesses are not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of the public order.

32. I may at this stage point out that although the Detaining Authority in the grounds of detention has stated that the witnesses or the victims are not ready and willing to come forward to file their individual complaints against the petitioner herein on account of fear, yet it appears that when the offence came to be registered at the Kamlabaug Police Station on 4th September, 2014 of the offence under Sec. 324 of the I.P.C., as many as six witnesses have given their statements before the Police. Such statements were recorded under Sec. 161 of the Code of Criminal Procedure. This itself would suggest that the satisfaction recorded by the Detaining Authority that the affected persons and the witnesses are not coming forward to lodge their complaints against the petitioner herein appears to be absolutely without any basis and contrary to the materials on record. If that be so, then, although the in-camera statements are acceptable as a piece of strong circumstance, yet the Court owes a duty to scrutinize such statements very closely with a view to see that the same inspires any confidence, and more particularly, even if the contents of such statements are believed to be true, whether the public order could be said to have been affected or likely to be affected.

33. In this regard, the affidavit-in-reply filed by the District Magistrate dated 26th January, 2015 is also very vague and contrary to the materials on record. In the affidavit-in-reply, more particularly in Paragraph 7, it has been stated that the deponent District Magistrate had recorded the statements of the two witnesses regarding the activities of the detenu and those two witnesses had also stated that the acts of the petitioner were detrimental and prejudicial to the public order. The averments made in Paragraph 7 of the reply are not only vague, but does not make any sense. What I find from the grounds of detention is that the statements were recorded by the Police Inspector of the Kamlabaug Police Station, Porbandar and the same were verified thereafter by the Deputy Police Superintendent (City), Porbandar. Thereafter, it is stated that the two witnesses were called before the Detaining Authority and the Detaining Authority also verified about the contents of the statements. Therefore, it is not clear whether the Detaining Authority actually recorded the statements as stated in the affidavit-in-reply or he carried out the verification of such statements. The Detaining Authority ought to have made this aspect very clear, more particularly when he has passed the order of detention making such in-camera statements as

the foundation for the same. In any view of the matter, there is no satisfaction recorded as regards the truthfulness of the statements.

34. Thus, in the overall view of the matter, I am convinced that the detention of the petitioner is not in accordance with law and the order of detention deserves to be quashed and set aside.

35. The matter does not rest over here. I would like to observe something in addition to what I have stated above. I intend to say so keeping in mind that everyday not less than twenty-five matters are taken up for final hearing wherein the detention orders are challenged. I have observed that despite best of the efforts made by the learned A.G. Ps. appearing for the State, they are unable to defend the orders of detention. The reason for the same is plain and simple. The detention orders are often being passed just for the sake of passing and that too without achieving any object in that regard. The law so far as the preventive detention is concerned, is now as clear as a noon day. There are catena of decisions of the Supreme Court taking the view that the orders of preventive detention should not be passed in a casual manner. The powers of preventive detention being drastic and when the liberty of the citizen is put within the reach of the Authority, the action must comply not only with the substantial requirements of law, but it should be with those forms which alone can indicate the substance. The contravention of law always affects "order" but before it could be said to affect "public order", it must affect the community or the public at large. One has to imagine three concentric circles, the largest representing "law and order", the next representing, "public order" and the smallest representing "security of State". An act may affect "law and order" but not "public order", just as an act may affect "public order" but not "security of the State". Therefore, one must be careful in using these expressions.

36. The Gujarat Prevention of Anti-Social Activities Act, 1985 came into force from 27th May, 1985. The Presidential assent to the same was accorded on 1st August, 1985. The same was enacted to provide for the preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property-grabbers for preventing their antisocial and dangerous activities prejudicial to the maintenance of the public order.

37. In exercise of the powers conferred by sub-sec. (2) of Sec. 3 of the Gujarat Prevention of Anti-social Activities Ordinance, 1985, the Government of Gujarat directed that the Commissioner of Police, Ahmedabad/Baroda/Surat/Rajkot may also, if satisfied as provided in sub-sec. (1) of the said Sec. 3, exercise within the local limits of his jurisdiction, the powers conferred by the said sub-sec. (1).

38. In the same manner, the powers were conferred upon the District Magistrates too. Thus, the Notifications which were issued way back in the year 1985 conferring the powers of detention upon the Commissioner/District Magistrate continues even as on today and there is nothing on record to even prima facie suggest whether the Government has made any periodical review of the

circumstance prevailing/likely to prevail in the areas within the local limits of the jurisdiction of the Commissioner of Police or the District Magistrate, as the case may be. This, in my opinion, is a very dangerous situation. I may quote with profit a decision of the Supreme Court in the case of *Abhay Shridhar Ambulkar Vs. S.V. Bhawe, Commissioner of Police and Others*, AIR 1991 SC 397 : (1991) 1 Crimes 290 : (1990) 4 JT 759 : (1990) 2 SCALE 1274 : (1991) 1 SCC 500 : (1990) 3 SCR 552 Supp : (1991) 1 UJ 347 . In the said case, the Supreme Court was dealing with a matter relating to the preventive detention under the National Security Act, 1980 (65 of 1980). The principal argument before the Supreme Court was that there was no valid conferment of power on the Commissioner to make the detention order. It was also argued that the Government had issued the order without applying its mind and by simply reproducing the words of sub-sec. (3) of Sec. 3. The satisfaction of the Government for conferring the power on the Commissioner for the purpose in question was purported to have been reached on the circumstances prevailing on the date of the order or likely to prevail during the three months period in question. It was also argued that the Government was not certain which of the alternative circumstances was relevant for reaching the subjective satisfaction and it was submitted that it had acted in a mechanical manner without application of mind. In that context, the observations of the Supreme Court are worth taking note of:

"The power to make an order of detention primarily rests with the Central Government or the State Government. The State Government, however, being satisfied with certain circumstances may order that the District Magistrate or the Commissioner of Police may also make an order of detention in respect of matters relating to the security of the State or public order or maintenance of supplies and services essential to the community against any person within their respective areas. The State Government can make such an order which shall not in the first instance exceed three months but it may extend such period from time to time making fresh order for a further period against not exceeding three months at one time. It may be noted that the conferment of this power on the District Magistrate or the Commissioner of Police is not to the exclusion of, but in addition to the powers of the Government to exercise its own power.

7. The first Paragraph of the order dated 6th January, 1990 states that Government was satisfied that having regard to the circumstances prevailing or likely to prevail in Greater Bombay Police Commissionerate, it is necessary that during the period commencing on 30th January, 1990 to 29th April, 1990 that the Commissioner should also exercise the powers conferred under sub-sec. (2) of Sec. 3 of the Act. This is indeed no more than a reproduction of the terms of sub-sec. (3) of Sec. 3. But sub-sec. (3) refers to two independent circumstances namely: (i) the prevailing circumstances, (ii) the circumstances that are likely to prevail. The former evidently means circumstances in praesenti that is prevalent on the date of the order and the latter means the anticipated circumstances in future. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers for the current period, it has to satisfy

itself with the prevailing circumstances. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers during the future period, it must be satisfied with the circumstances that are likely to prevail during that period. This seems to be the mandate of sub-sec. (3).

8. Subjective satisfaction for the exercise of power under sub-sec. (3) of Sec. 3 must be based on circumstances prevailing at the date of the order or likely to prevail at a future date. The period during which the District Magistrate or the Commissioner of Police, as the case may be, is to exercise the power provided by sub-sec. (2) of Sec. 3 is to be specified in the order which would depend on the existence of circumstances in praesenti or at a future date. If the subjective satisfaction is based on circumstances prevailing at the date of the order, the choice of period, which must not exceed three months, would have to be determined from the date of the order. If the conferment of power is, considered necessary because of circumstances likely to prevail during the future period, the duration for the exercise of power must be relatable to the apprehended circumstances. Therefore, the specification of the period during which the District Magistrate or Commissioner of Police is to exercise power under sub-sec. (2) of Sec. 3 would depend on the subjective satisfaction as to the existence of the circumstances in praesenti or future. Since very drastic powers of detention without trial are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding the period during which such power shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail. The subjective satisfaction cannot be lightly recorded by reproducing both the alternative clauses of the statute. The subjective satisfaction on the prevailing circumstances, or circumstances that are likely to prevail at a future date is the sine qua non for the exercise of power. The use of the word "or" signifies either of the two situations for different periods. That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail in future. The latter may stem from the former. For example, there may be disturbances on the date of the order and the same situation may be visualised at a future date also in which case the power may be conferred on the subordinate officers keeping both the factors in mind; but in that case the two circumstances would have to be joined by the conjunctive word "and" not the disjunctive word "or". The use of the disjunctive word "or" in the impugned Government order only indicates non-application of mind and obscurity in thought. The obscurity in thought inexorably leads to obscurity in language. Apparently, the Government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used the disjunctive word "or" in the impugned order."

39. Thus, the decision of the Supreme Court referred to above while dealing with the conferment of powers under sub-sec. (3) of Sec. 3 of the N.S. Act, makes it clear that the conferment of power has to be specific either with regard to the

circumstances prevailing or likely to prevail and not for both. In that case, even order dated 6-1-1990 of the State Government conferring the power on the Commissioner of Police recorded the satisfaction of the Government of Maharashtra that having regard to the circumstances prevailing or likely to prevail in the Greater Bombay Police Commissionerate, it was necessary that during the period commencing on January 30, 1990 and ending on April 21, 1990, the Commissioner of Police shall exercise the powers conferred by sub-sec. (2) of Sec. 3 of the Act. The same was not approved by the Supreme Court.

40. I have also noticed something very important so far as the P.A.S.A. Act is concerned. I have tried to compare the provisions of the P.A.S.A. Act, 1985 with that of the National Security Act, 1980, the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981, the Karnataka Prevention of Dangerous Activities of Boodeggers, Drug Offenders, Gamblers, Gundas, Immoral Traffic Offenders and Slum-grabbers Act, 1985 and the Uttar Pradesh Gangster and Anti-social Activities (Prevention) Act, 1986. Excluding the P.A.S.A. Act of 1985 with which I am concerned, one common provision which I find in the other Acts is the proviso to Sec. 3(2) of the Act, which reads as under:

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

41. In the Act of 1985, I do not find any such proviso. That is the reason why the Notification of the year 1985 still is in force and on the basis of which even as on today the Police Commissioners and me District Magistrates exercise their powers of preventive detention. It necessarily implies that from 1985 till this date, there does not appear to be any review of the delegation of power.

42. However, at this stage, I must also refer to a decision of the Supreme Court in the case of Navalshankar Ishwarlal Dave and another Vs. State of Gujarat and others, AIR 1994 SC 1496 : (1994) CriLJ 2170 : (1993) 2 Crimes 449 : (1993) 3 JT 421 : (1993) 2 SCALE 813 : (1993) 3 SCC 754 Supp : (1993) 3 SCR 676 , wherein the Supreme Court was dealing with a matter relating to the preventive detention under P.A.S.A. and considered the contention raised on behalf of the detenu that the delegation of power to the authorized officer was illegal or invalid. The Supreme Court made the following observations as contained in Paragraph 3 of the judgment. Paragraph 3 reads as under:

"3. Section 3(2) of P.A.S.A. empowers the State Government that having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate and the Commissioners of Police, by an order in writing direct that District Magistrate, the Commissioner of Police, may also, if satisfied the existence of conditions envisaged in sub-sec. (1) of Sec. 3 to exercise the powers of the State Government to detain any person. The

contention of Shri Ganesh, the learned Counsel for the appellants is that the blanket power of delegation is a negation of satisfaction on the part of the State Government and likely to be abused by the District Magistrate or the Commissioner of Police. The Legislature entrusted the power to the State Government and if need be only selectively but not blanket delegation is permissible. After the issue of the notification in 1985 no review thereafter was done. The order of delegation made by the State Government without application of mind was, therefore, illegal and invalid and the sequator detention made became illegal. We find no force in the contention. P.A.S.A. was made in exercise of the power under Entry No. 3 of Concurrent List-III of 7th Schedule and reserved for consideration of the President and received his assent. So it is a valid law. It envisages that the State Government under Sec. 3(1) would exercise the power of detention or authorise an officer under Sec. 3(2) to detain bootlegger, dangerous person, drug offender, immoral traffic offender and property-grabber. The P.A.S.A. was made to provide for preventive detention of aforesaid persons whose activities were satisfied to be prejudicial to the maintenance of public order. Sub-section (4) of Sec. 3 declares that a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger, dangerous person, drug offender, immoral traffic offender and property-grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Explanation thereto postulates that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities by any person referred to in the sub-sec. (4) directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Therefore, the Act postulates satisfaction on the part of the State Government that the dangerous and anti-social activities of any of the aforesaid persons shall be deemed to be acting prejudicial to the maintenance of public order whether the person is engaged in or is making preparation for engaging in any activities enumerated in the definition clauses and the public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if the activities directly or indirectly, causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life, property or public health. In the counter-affidavit filed on behalf of the State in the High Court and consideration thereof the High Court held that "the situation was found prevailing in the State in the year 1985 where the impact of the activities of various persons mentioned in the Preamble with reference to their respective activities has heightened from being anti-social and dangerous activities to be prejudicial to the maintenance of public order." It is, with a view, to curb those dangerous or anti-social activities, the Government considered it appropriate to delegate the power under sub-sec. (2) of Sec. 3 to the "authorised officer" and the Government has stated in the notification that "having regard to the

circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of each of the District Magistrate specified in the Schedule annexed thereto, the Government of Gujarat is satisfied that it is necessary so to do" and accordingly exercised the power under sub-sec. (2) of Sec. 3 and directed the authorised officers i.e. the District Magistrate of each District specified in the Schedule and also the three Commissioners of Police in the respective Corporations to exercise within their local limits of jurisdiction, the power conferred by sub-sec. (1) of Sec. 3. It is seen that the dangerous or antisocial activities are legislatively recognised to be prejudicial to the maintenance of public order. The enumerated activities hereinbefore referred to are not isolated but being indulged in from time to time adversely affecting the public order and even tempo. The District Magistrate concerned, being the highest Dist. Officer on the spot and the Commissioner of Police in the cities have statutory duty to maintain public order. Therefore, with a view to have then effectively dealt with, to move swiftly where public order is affected or apprehended and to take action expeditiously instead of laying information with the Government on each occasion and eagerly awaiting action at State Government level, the State Government having exercised the power under Sec. 3(2) conferred on the District Magistrate or the Commissioner the power to order detention under Sec. 3(1) when he considers or deems necessary to detain any person involved in any of the dangerous or anti-social activities enumerated herein before, prejudicially affecting or "likely to affect the maintenance of public order". The later clause lay emphasis on immediacy and promptitude and the authorised officer on the spot is the best Judge to subjectively satisfy from the facts and ground situation and take preventive measure to maintain public order. The reliance by Shri Ganesh on the decision of this Court reported in A.K. Roy and Others Vs. Union of India (UOI) and Others, AIR 1982 SC 710 : (1982) CriLJ 340 : (1981) 4 SCALE 1904 : (1982) 1 SCC 271 : (1982) 2 SCR 272 , Para 72 has no application in view of the factual background in this Act. So long as the activities of bootlegger, dangerous person, drug offender, immoral traffic offender and property-grabber persist within the local limits of the jurisdiction of the concerned District Magistrate and Commissioners of Police, as the case may be, and being directly responsible to maintain public order and to deal with depraved person to prevent anti-social and dangerous activities which affects adversely or are likely to affect adversely the maintenance of public order, the necessity would exist. Therefore, the question of periodical review of delegation order does not appear to be warranted."

43. It appears that in the said decision, there is no reference of the earlier decision of the Supreme Court in the case of Abhay Shridhar Ambulkar Vs. S.V. Bhawe, Commissioner of Police and Others, AIR 1991 SC 397 : (1991) 1 Crimes 290 : (1990) 4 JT 759 : (1990) 2 SCALE 1274 : (1991) 1 SCC 500 : (1990) 3 SCR 552 Supp : (1991) 1 UJ 347 .

44. Be that as it may, even if the periodical review of delegation of the power is not warranted, the same makes the responsibility and duty of the State

Government more onerous when it comes to approving the order of detention passed by the Detaining Authority.

45. I find considerable merit in the submission of Mr. Mangukiya, the learned Advocate appearing for the petitioner that while exercising the power of confirmation/approval of the order of detention, in accordance with sub-sec. (3) of Sec. 3 of the said Act, the State Government owes a duty to apply its mind to the order of detention. The stage of approval should not be treated as an empty formality. The Government owes a duty to see whether the order of detention passed by the Detaining Authority is in accordance with law, more particularly in conformity with the judicial pronouncements of the Supreme Court and the High Court of Gujarat. If the concerned officer of the State Government had carefully read the present detention order, he might not have approved it at all in light of the said position of law that mere registration of cases under the I.P.C. is no ground to detain a person. The confirmation or the approval to the orders of detention in accordance with sub-sec. (3) of Sec. 3 of the P.A.S.A. Act is an additional safeguard introduced by the statute, and therefore, the power of grant of approval cannot be mechanically exercised in a casual manner. The grant of approval to the order of detention in accordance with sub-sec. (3) of Sec. 3 is not an empty formality. The Government must examine whether the order is lawful and when called upon by the Court of law to show its application of mind, there should be something on record for the same. I am informed by the learned A.G.P. that in the year 2014, almost three thousand and odd orders of detention were passed, out of which almost in 50% cases, it was recommended by the Advisory Board constituted under the Act to revoke the order. This itself is suggestive of the fact that the orders of preventive detention are more or less passed in a very casual manner.

46. I am conscious of my powers under Art. 226 of the Constitution of India. It is not permissible for me to legislate. I cannot issue a writ of mandamus to amend the Act and introduce a proviso as referred to above. That is absolutely for the State Government to consider, if it deems fit. However, I may only say that the State Government should frame appropriate guidelines for approval of the orders of detention by the State Government under sub-sec. (3) of Sec. 3. If appropriate guidelines are framed in accordance with law, probably that would be more helpful in ensuring that the order of detention is in accordance with law.

47. In the result, this petition succeeds and is hereby allowed. The order of detention dated 6th January, 2015 passed by the respondent authority is hereby ordered to be quashed and the detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute. Direct Service is permitted. A copy of this judgment be forwarded to the Principal Secretary, Home Department, State of Gujarat, as well as to the Law Secretary, Government of Gujarat.