

(1985) 12 PAT CK 0012

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 40 of 1981 (R)

Lallan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-12-1985

Acts Referred:

Bihar Control of Crimes Act, 1981 — Section 3, 3(1), 3(3)

Citation : (1988) PLJR 64

Hon'ble Judges : S.S. Sandhawalia, C.J.;U.P. Singh, J;Madan Mohan Prasad, J

Bench : Full Bench

Advocate : P.S. Dayal, H.R. Tripathy, A.S. Dayal, A. Sahay and Miss I. Choudhury, A.C, for the Appellant; T.K. Das, S.C. and Dilip Jerath, J.C. to S.C., for the Respondent

Judgement

S.S. Sandhawalia, C.J.—The true import of the words--"the general nature of the material allegations against him"--employed in section 3(1) of the Bihar Control of Crimes Act, 1981 (and its predecessor Ordinances) and the necessary requirements therefor, is the significant question necessitating this Reference to the Full Bench. Equally at issue is the correctness of the earlier view in Birendra Kumar Singh Vs. The State of Bihar and Others, . The facts, which are not in serious dispute, may be briefly noticed with relevance to the question aforesaid. On the 30th of October, 1980, respondent no. 2, the Deputy Commissioner of Palamau at Daltonganj initiated a proceeding u/s 3 of the Bihar Crime Control Ordinance, 1979 (vide Annexure-2) on the basis of information laid before him and directed that a notice be issued against the petitioner under sub-section (1) thereof. He further receded that the petitioner being an anti-social element whose activities could not be prevented otherwise than by his immediate arrest, issued warrants against him under sub-section (4) of section 3 aforesaid. In compliance therewith, the petitioner was arrested on the 8th of March, 1981 and was remanded to jail custody on the same date by the District Magistrate. A grievance is sought to be made out that the petitioner's release on bail was inordinately delayed despite the fact that he was willing to execute a bond or

offer sureties for his release. Admittedly, on the 16th of May, 1981, the petitioner was served with a notice (Annexure-3) u/s 3(1) of the Ordinance. This notice expressly stated that the petitioner was an anti-social element and further specified that he had been found habitually committing heinous crimes punishable under Chapters XVI and XVII of the Indian Penal Code. Details of seven police cases registered against him in Sadar Police Station and Lesliganj Police Station with the respective case number, the year of offence and the particular sections of the offence under the Indian Penal Code and the Arms Act, were duly given in the said notice. It was further mentioned therein that the petitioner had proved himself to be a terror to the society and as such the peace-loving people have apprehension of their safety at his hands and, therefore, witnesses were reluctant to come forward to depose against him which amounted to tampering with the evidence. The notice directed the petitioner to appear before respondent No. 2 on the 19th of May, 1981, and to tender an explanation in writing against the material allegations for showing cause why an order under sub-section (3) of section 3 may not be passed against him. He was further intimated that if he desires to examine himself or any other witnesses, then he may furnish their names and addresses in support of his explanation.

2. It would appear that the petitioner did not choose to show cause and tender any explanation in compliance with the notice (annexure 3) u/s 3(1) and instead has preferred this application for quashing the entire proceedings against him primarily on the ground that the said notice did not adequately contain the general nature of material allegations against him. This Court whilst admitting the present application directed the release of the petitioner if he offered bail and stayed further proceedings under the Ordinances initiated against the petitioner till the final decision of the writ petition. Later the case came up for hearing before the Division Bench on the 19th of December, 1984, when basic reliance was sought to be placed on Birendra Kumar Singh Vs. The State of Bihar and Others, as also a number of other cases referred to in the writ petition for contending that the whole proceedings against the petitioner was vitiated as the notice u/s 3(1) did not precisely specify the nature of the material allegations against the petitioner. Learned Counsel further sought to literally import the stringent requirements of the grounds to be furnished for detention u/s 12 of the Act for the proceedings for externment u/s 3 as well. Raising some doubt about the correctness of the earlier precedents on the point and the alleged identity of the proceedings for externment with those of detention, the matter has been referred for an authoritative adjudication to the Full Bench and that is how it is before us now.

3. Ere one comes to the core of the matter, it seems apt to recall that the notice herein was issued u/s 3 of the Bihar Control of Crimes Ordinance, 1979 (hereinafter to be referred to as the "Ordinance"). Further, it is common ground that the said section 3 after passing through the interregnum of successive Ordinances is now incorporated in the Bihar Control of Crimes Act, 1981 (hereinafter referred to as the "Act"). That these provisions are totally identical

and in pari materia is not in dispute. Again the Bihar Control of Crimes Rules, 1978, which were framed under the Bihar Control of Crimes Ordinance, 1978 are, by virtue of section 27 of the Bihar and Orissa General Clauses Act, deemed to have been made under the Act since it is common ground that no fresh rules have been framed u/s 29 thereof. Consequently, the body of Rules and in particular rule 4 and form I in the Schedule applicable under the earlier Ordinance are equally continued under the Act. In view of the identity of the provisions reference hereinafter is being made not to the ephemeral provisions of the Ordinances but to the identical provisions of the Act and the Rules.

4. Now, as before the Division Bench so before us, the learned counsel for the petitioner, Mr. P.S. Dayal, placed firm reliance on *Birendra Kumar Singh v. State of Bihar and others* (supra) for contending that even the specific enumeration of the earlier cases in which the petitioner was involved along with the particulars of the crime charged against him duly given in the notice was not adequate compliance with the requirements of section 3(1). In particular, it was the stand that these did not suffice to inform the petitioner of "the general nature of material allegations against him" as prescribed by law. Somewhat eloquently but not logically it was sought to be contended that externment was not only analogous to detention but, in fact, was even more stringent than the same. On that basic premise, it was submitted that the general nature of the material allegation against the proceedee u/s 3(1) of the Act must conform to the precise and detailed grounds of detention which are required to be served on a detenu both u/s 17 of the Act as also by the mandate of Article 22 of the Constitution of India. Further support was sought from the observations of the Division Bench in *Mahabir Pd. Akela v. State of Bihar and another* (1979 BBCJ 793).

5. Since the underlying fallacy of the aforesaid submission stems from some confusion about the nature of preventive detention u/s 12 of the Act and the proceedings for externment u/s 3 thereof, it seems not only apt but necessary to clear the decks of the same. That the two concepts are distinct and different both in substance and procedure seems so manifest that one is somewhat surprised that any identity therefor should be claimed or even a superficial analogy be attempted to be raised. What is significant as to the substantive nature of the difference that calls for pointed notice is the fact that preventive detention by its very nature in the first instance deprives the citizen of his constitutional right of personal liberty. The detenu is first arrested and detained and only thereafter the procedural requirements for the continuance or validation of such detention by way of serving the grounds of such detention and entertaining of representation against them arise. So jealous is the law of the right of personal liberty that the Constitution itself provides the safeguards with regard to preventive detention in clauses (4), (5) and (6) of Article 22. On the other hand, externment does not, at the threshold stage, necessarily deprive the proceedee of his liberty, and at the culmination stage only affects the right of residence in a particular area. This apart, there are material differences in the procedural requirements of the two which equally deserve to be highlighted. For the purposes of section 3 of the Act,

it is stringently required that a notice be first sent to the proceedee informing him of the general nature of the material allegation against him and giving him a reasonable opportunity of tendering an explanation regarding the same. By the very nature of things, no such notice can be envisaged in preventive detention because of its urgency. Again sub-section (2) of section 3 in terms provides the right to consult and to be defended by counsel of his choice to the proceedee and in terms an opportunity of examining himself and other witnesses in support of his explanation. It is only after the exercise of these rights and when the matter has been adequately presented and argued before the Deputy Commissioner that the order of externment under sub-section (3) of section 3 may follow and that too only on the satisfaction that the requirements of clauses (a) and (b) of subsection (1) exist. This order has again no touch of finality and a statutory and expeditious appeal u/s 6 is provided in the widest terms. Plainly enough there is nothing corresponding or equivalent to these provisions in the proceedings under preventive detention. It is for this reason that the grounds of detention and the requirement of representation, etc., have been construed with the utmost liberality in favour of the detenu. From the above, it would seem manifest that both the substance and procedure of externment are altogether different and distinct from the grounds of preventive detention and the representation against the same both u/s 12 of the Act and Article 22 of the Constitution. Therefore, any admixture of the concepts of detention and externment under the Act and even generally thus seems to be not warranted by law and stems from a basic misconception of the nature of the two proceedings. Inevitably, it would follow that to rely on the words and requirements of the law for preventive detention in the context of externment would be treading on very slippery ground and pointlessly inviting confusion and error.

6. One must, therefore, revert and focus oneself on the provisions of section 3. Since the whole controversy revolves round it, it is apt to read the relevant part thereof:--

3. Externment, etc. of anti-social elements:--

(1) Where it appears to the District Magistrate that --

(a) any person is an anti-social element, and

(b) (i) that his movements or acts in the district or any part thereof are causing or calculated to cause alarm, danger or harm to persons or property; or

(ii) that there are reasonable grounds for believing that he is engaged or about to engage in the district or any part thereof, in the commission of any offence punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or under the Suppression of Immoral Traffic in Women and Girls Act, 1956, or abetment of such offence; the District Magistrate shall by notice in writing inform him of the general nature of the material allegation against him in respect of clauses (a) and (b) and shall give him a reasonable opportunity of tendering an explanation regarding them.

(2) The person against whom an order under this section is proposed to be made shall have the right to consult and be defended by a counsel of his choice and shall be given a reasonable opportunity of examining himself, if he so desires, and also of examining any other witnesses that he may wish to produce in support of his explanation unless for reasons to be recorded in writing the District Magistrate is of opinion that the request is made for the purpose of vexation or delay.

(3) The District Magistrate on being satisfied that the conditions specified in clauses (a) and (b) of sub-section (1) exist, may by order in writing:--

X X X

7. Now, a plain reading of the aforesaid section 3 would disclose that by virtue of clause (a) of sub-section (1) it is rested on the firm, factual and foundational base that the person proceeded against is an anti-social element. This is not to be understood generically but stands precisely defined in section 2(d) of the Act which is in the undermentioned terms:--

2. Definition.--In this Act, unless the context otherwise requires,--

X X X

(d) "Anti-Social element" means a person who --

(i) either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or

(ii) habitually commits or abets the commission of offences under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(iii) who by words or otherwise promotes or attempts to promote, on grounds of religion, race, language, caste or community or other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups or castes or communities; or

(iv) has been found habitually passing indecent remarks to, or teasing women or girls; or

(v) who has been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959.

The definition aforesaid would indicate that the legislature has created five clear cut categories which are in the alternative and which alone would bring a person within the ambit of an anti-social element. Therefore, to be proceeded against u/s 3, such a person must come within one or other precise category. It is thus manifest that the proceeding u/s 3 cannot be launched against any and every citizen but only against the limited--and, if one may say so--the nefarious classes spelt out in the five clauses of section 2(d). It is and cannot, indeed, be directed against the citizenry in general but only against the shadowy suspicious

characters of the underworld. The broader approach to section 3, therefore, has to be in the context of the larger purpose of the Act of containing and constricting the illicit activities of the antisocial elements of a society as a whole.

8. Once the corner-stone of being an antisocial element is found to exist then only the other requirements of sub-section (1) of section 3 would come into play. These are both factual and necessarily conjectural or inferential as some of them would pertain to the apprehended future activity of the anti-social elements. What has then to be pointedly noticed is that the two sub-clauses (i) and (ii) of clause (b) are in the alternative, and either of them along with the factum of being an anti-social element is sufficient for the issuance of a notice. There appears to be some misapprehension in some of the precedents noticed hereinafter with regard to clause (b) which tend to hold as if both the requirements of sub-clauses (i) and (ii) are to be collectively satisfied for the purposes of the notice. This is plainly not so and is apparently an inadvertent fallacy. Therefore, it suffices that the movements or acts, of the anti-social element appear to the District Magistrate as causing or calculated to cause alarm, danger or harm to persons or property. Strictly in the alternative it would be equally sufficient if it appears to the District Magistrate that the anti-social element is about to engage in the commission of offences specified in sub-clause (ii). Thus, the two requirements of sub-clauses (i) and (ii) do not have to concur. They are individual and separate and come into play in the alternative.

9. I am then inclined to hold that significance must necessarily attach to the word "appear" in the very opening line of section 3(1) itself. What the law requires is that it merely appears to the District Magistrate and not that it is established or proved beyond doubt. It is plain that the word "appears" occurs at the lowest rung of the phraseology which could be used here, namely, of "established", "proved" or "satisfied", etc. A mere appearance with regard to the requirements of clause (b) of section 3(1) is the broad base on which the initiation of the proceedings may be lawfully rested. This is indeed necessarily so because, as already noticed, one of the elements here must inevitably be conjectural or inferential with regard to the apprehended conduct of the anti-social element in the future. Naturally, the future action of the proceedee can only be conjectured or inferred from his past and present conduct. In a way section 3(1) pertains to the yesterdays, todays and tomorrows of the proceedee's conduct. The last must inevitably remain in the limbo of a reasonable inference and cannot be a matter of established fact at that stage. Clearly enough, the future must, by its very nature, remain somewhat nebulous or unpredictable.

10. Juxtaposed against this is then the fact that under sub-section (3) of section 3 the final order of externment is to be passed again on only the satisfaction of the District Magistrate that the conditions specified in clauses (a) and (b) of sub-section (1) exist. It has been repeatedly held that wherever the word "satisfaction" is employed in such a context, this would be essentially subjective

in nature. It has to be distinguished from a judicial function strict sense or even a quasi-judicial one. It is not that the law requires that the conditions in clauses (a) and (b) in sub-section (1) must be proved to the hilt beyond reasonable doubt as if in a criminal trial for purposes of conviction. On the other hand, the requirement here merely is that it would suffice if the District Magistrate is satisfied that they exist. It is thus manifest that the material words "appears" in sub-section (1) and "satisfied" in sub-section (3) have been deliberately and advisedly used by the legislature in the somewhat peculiar context of the necessity of containing or externing the anti-social element of society, and this object is not to be whittled down by precedentially imposing the requirements of evidence and proof beyond reasonable doubt which are attributes of a criminal trial only.

10A. It then calls for notice that in this field the statute itself provides in detail the form and content of the notice u/s 3(1). Rule 4 prescribes that such a notice shall, as far as may be, conform to form I in the Schedule to the Rules. This form precisely spells out the prescribed requirements of the notice itself. Clause (a) thereof is directed to pinpoint as to the category of anti-social element u/s 2(d) in which the proceedee may fall. The succeeding clause (b) corresponds to sub-clause (i) and (ii) of section 3(1)(b) and the form is governed by the overall direction that whichever ingredient is not applicable should be deleted. Clause (c) seems to be an added provision to indicate where necessary that witnesses are not willing to come forward to give evidence against such an anti-social person by reason of apprehension on their part as regards the safety of their person or their property. It is thereafter that the form briefly provides by giving three serial numbers with regard to the general nature of the material allegations against the anti-social element. Significantly, the form does not refer to any instances, specific detail or material particulars of these allegations. It is again a reiteration of the mere general nature of the material allegations, which is the requirement of the law. It would appear from the contents of the form that the statute does not envisage an exhaustive narration of facts or every minuscule detail or specific instances for the information of the proceedee. Since the Act and the Rules have prescribed the form and the contents of the notice u/s 3(1), it is not easy to override the same, if the requisite statutory requirements thereof are satisfied.

11. Lastly, section 6 of the Act provides an expeditious appeal to the Commissioner fixing a narrow limitation of fifteen days for preferring the same from the date of an order of externment. The widest power is given to the Commissioner to re-evaluate all the facts or law, etc. for the exercise of his appellate jurisdiction. The Commissioner is entitled to confirm, modify or set aside the order of externment and in terms has been given the power to stay the operation of the order meanwhile. As was noticed earlier, such an appellate power is conspicuously absent in the context of preventive detention.

12. Inevitably one must now turn to precedent, and the pride of place must be

given to the judgments of the Final Court. Herein what calls for notice is that broadly the provisions of the Act have a close analogy to the Bombay Police Act of 1951. It is significant to notice that there is a long line of precedent not only upholding the vires and constitutionality of the provisions of the Bombay Police Act but equally highlighting that the general nature of allegation is not to be particularised to the level of absolute proof and establishment of the fact by evidence. Way back in Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another, a Constitution Bench repelled the challenge to the vires of section 57 and the allied provisions of the said Act and in particular observed with regard to the furnishing of the general nature of material allegation to the proceedee as under:--

In this connection it was argued on behalf of the petitioner that S. 59 only required the general nature of the material allegations against the person externed to be disclosed and that, as it did not further provide for particulars to be supplied to such a person, it would be very difficult for him to avail of at least the second ground on which S. 61 permits him to get the matter judicially examined. But in the very nature of things it could not have been otherwise. The grounds available to an externee had necessarily to be very limited in their scope, because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, under S. 107 or S. 110.

Another Constitution Bench in Bhagubhai Dullabhabhai Bhandari Vs. The District Magistrate, Thana and Others, again upheld the constitutionality of section 56 of the said Act and also dismissed the petition challenging the externment. The true import of "the general nature of the material allegation" then came up for consideration in State of Gujarat and Another etc. Vs. Mehboob Khan Usman Khan etc., . Therein these were specified in the notice as under --:

1. You way-lay, rob and extort money from the persons at the point of knife and under threats of violence;
- 2 You demand money from the persons and on their refusal to pay you beat them;
3. You consume eatables from the place of public entertainment without payment and when legal dues are demanded you beat the person.

The High Court of Gujarat quashed the notice on the ground that the aforesaid did not satisfy the requirements of the law and were vague. Whilst reversing the High Court their Lordships held that the aforesaid information was not only adequate even for issuing a notice to the externee but was later adequate for the satisfaction of the District Magistrate to pass the final order of externment. It was observed as follows:

The reasoning of the learned Judge that the said allegation should have contained all the particular places of public entertainment, or what particular

establishment the respondents were supposed to have visited, is not warranted, by the provisions of Section 59.

However, the true rationale underlying the legislative mandate that only the general nature or tenor of the allegations is to be spelt out in the notice is highlighted in the forceful words of Chandrachud, J. (as his Lordship then was) in *Pandharinath Shridhar Rangnekar Vs. Dy. Commr. of Police, The State of Maharashtra*, --

These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under clause (a) or (b) of section 56 if, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externnee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceeding. If the show cause notice were to furnish to the proposed externnee concrete data like specific dates of incidents or the names of persons involved in these incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. I here is a brand of lawless element in society which it is impossible to bring to book, by established methods of judicial trial because in such trials there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externnee "of the general nature of the material allegations against him". That obligation fixes the limits of the co-relative right of the proposed externnee. He is entitled, before an order of externment is passed u/s 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations.

Once these judgments of the Final Court are viewed in the correct perspective then it seems plain that the general nature of the material allegations is not to be converted into the specific and detailed instances and particulars of the same necessarily in the narrative form.

13. Coming now to the sheet-anchor of the petitioner in *Birendra Kumar Singh Vs. The State of Bihar and Others*, , it may first be noticed that reliance therein was primarily placed on *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, which, clearly, was a case under preventive detention law and, as pointed out earlier, such reliance could only be misleading and a cause of confusion. That the learned Judges were influenced by the extraneous considerations which are applicable to preventive detention and have no play in the context of externment seems manifest on reading the said judgment. It would appear that the learned counsel for the parties were somewhat remiss in

not bringing to the notice of the Bench the relevant judgments of the Final Court noticed above, under the externment provision, barring the case of Hari Khemu Gawali v. Dy. Commissioner of Police, Bombay and another (supra) which with respect, was wrongly distinguished.

14. Again, both the learned Judges took the view that the "general nature of material allegation" is not to be read as particulars of the material allegation and further all the details and evidence are not to be given. Nevertheless it was held that despite the enumeration of the specific sections for the offence, the date of the occurrence, the date of the recording of the first information report and its police station in as many as five different cases, they still did not satisfy the requirements of law. Judgments are indicative that the substance of each case in the narrative form would be necessary and unless that was done, the proceedings must be quashed. That the statute and the rules do not themselves require any over-elaborate specification of the allegations is manifest from the fact that rule 4 and the prescribed form therein do not visualise narratives of great detail nor do they prescribe the furnishing of the copies of all documents or annexures thereto. With the greatest respect, the judgment does not lay down the law correctly and has to be overruled.

15. The earlier case of Mahabir Prasad Akela v. State of Bihar and another (1979 BBCJ 793) (which was relied upon) again appears to be deeply imbued with the philosophy of preventive detention which, as already pointed out, is somewhat foreign in the context of externment. Reference to and reliance therein was made by counsel on Biram Chand Vs. State of Uttar Pradesh and Others, and Haradhan Saha Vs. The State of West Bengal and Others, , which were both cases of detention under the Maintenance of Internal Security Act. There is then a somewhat over-emphasis on the "movements and acts" u/s 3(1)(b)(i) whilst forgetting that sub-clauses (i) and (ii) are in the alternative and the "movements and acts" are not always necessarily pre-requisite because the notice may well be rested on sub-clause (ii) alone. As has been pointed out earlier, the language of section 3(1) requires that if it "appears" to the District Magistrate; but the observations in the judgment tend to hold as if it must be held or proved beyond doubt before he can even issue the notice u/s 3(1). Despite the language of the statute it was observed that the requirements of section 3(1) can only be fulfilled if all the details of all such activities are incorporated in the notice and further if no details are given, it may not be possible for the recipient to show cause against it. With respect, this appears to me as both contrary to the language and the spirit of the statute and would amount to re-writing the same rather than interpreting it. We are second to none in our solicitude for the maintaining of personal liberty. Undoubtedly, externment makes an inroad in the personal freedom of a citizen. The question, however, is whether the individual personal freedom of a known anti-social element has to give way to the larger public weal of the peaceful citizenry in general. With the deepest deference to the learned Judges, the judgment does not law down the law correctly and has to be necessarily overruled as well.

16. What has been said above is, with the deepest respect, also attracted to the Full Bench judgment of Allahabad High Court reported in Ramji Pandey Vs. State of Uttar Pradesh and Others, . Therein doubts were raised about the correctness of the earlier view in Harsh Narain alias Hakshu Vs. The District Magistrate and Another, in the light of the Supreme Court decision in State of Gujarat v. Mehbub Khan (supra). However, the Full Bench reiterated the earlier view whilst attempting to distinguish the forthright observations of their Lordships of the Supreme Court. With the deepest respect, I would wish to record my dissent therefrom.

17. In the light of the above, one may now focus oneself on the penultimate part of sub-section (1) of section 3. It has to be pointedly borne in mind that the legislature has very advisedly used the words "general nature" with regard to the material allegations against the proceedee. The emphasis is on the broad and general nature thereof. It is well known that the word "general" is the antonym of "specific". To construe the general nature of the material allegations as being specific and meticulous details of every charge or crime would in my view, be doing plain violence to the language. These words are intended to qualify and in a way to whittle down any particularization of the material allegations. They draw away from the word "specific". It is apt to remind oneself again that the legislature is well aware of the known phraseology of "material particulars". Equally it could not be at a loss for appropriate language if the intention was to provide specific instances and details. As would appear from the precedent of the Final Court noted hereinbefore, the legislature was aware of the difficulty of always providing specific instances and evidence etc. in the co-next of anti-social elements. Therefore the statute in terms at the threshold stage of the issuance of the notice merely requires the general allegations to be indicated to the proceedee. To technicalise the same into virtually specific requirements would, in my view, be unwarranted. The general nature of the material allegations cannot be converted into specific details and particulars of every charge and crime against the proceedee in the narrative form. Doing so would only be obliterating the clear intent and mandate of the legislature and usurping its functions in the thin guise of interpretation.

18. Coming now to the specific contents of the impugned notice, it seems to me that giving the time, the date and the number of the first information reports of the crime along with the specific sections under which they are recorded is more than ample compliance in this context. They indicate not only the general nature of the material allegations against the proceedee but, indeed, are specific details going well enough and beyond that. In those cases, in which the proceedee himself is the accused person, he would be more than well aware of the nature of the allegations against him therein. This is merely a method of an inferential incorporation of all the details of the said crime indicated by the first information report therefor. Indeed, in Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, even in the much more stringent context of preventive detention their Lordships noticed that it was not necessary to furnish copies of the first

information reports in criminal cases to the detenu in the following words:--

Much stress was, however, laid on the fact that the detenu had not been furnished with the copies of the first information reports in the criminal case in which he was convicted and in the three other criminal cases pending against him. It is said that the failure to furnish these documents vitiates the impugned order of detention. The contention appears to be misconceived. Under sub-sec. (5) of S. 173 of the Criminal P.C. 1973 the detenu had already been supplied with all the documents or relevant extracts thereof on which the prosecution relied in the criminal case in which he was convicted as well as on which the prosecution proposes to rely in the three criminal cases pending against him. There was, therefore, no need to supply the copies of the first information reports referred to in the grounds of detention over again, and no grievance can be made that the detenu was deprived of the right of making a representation at the earliest opportunity due to non-supply of these documents.

Again, the specific section of the Indian Penal Code or other statute under the crime is in a way indicative not merely of the general nature but equally of the specific nature of the guilt attributed. Where the notice refers to cases u/s 302 of the Indian Penal Code, it in terms means that the general-and, indeed, the specific material allegation against the proceedee is that of the murder of a human being either directly for the substantive charge and, if coupled with section 34 or 149, then vicariously. The reference to the specific section of a criminal statute is in a way clearly indicative of the effect.

19. In fairness to the learned counsel for the respondent State, it must be noticed that it was forcefully and frontally argued that even if there is some defect in the notice u/s 3(1), it would not ipso facto vitiate the proceeding. It was pointed out that u/s 3(1) the proceedee does not lose his personal liberty in the first instance and it would be open to him to demand any details or specific information if he is in any way in doubt with regard thereto or feels prejudiced thereby, as the notice u/s 3(1) is in no way to be equated with the furnishing of grounds to a detenu under the preventive detention law. It was submitted that undoubtedly the District Magistrate has jurisdiction in the matter and the same does not disappear by a minuscule defect in the notice and there would be no bar to give further particulars where demanded or to serve, an amended, or fresh notice where necessary.

20. The contention aforesaid is certainly not devoid of merit; but I am precluded from going into the same because of my clear finding that the notice in the present case more than amply satisfies the requirements of section 3(1) and the indication of the general nature of the material allegations to the proceedee. In the light of the aforesaid discussion, on principle, language of the statute, and precedent, one may now examine the validity of the impugned notice. Therein it stands expressly recorded that the petitioner was an antisocial element. It is further specified that he had been found habitually committing heinous crimes punishable under Chapters XVI and XVII of the Indian Penal Code. Details of as

many as seven police cases registered against him in the Sadar Police Station and Lesliganj Police Station with the respective case number, the year and the particular section of the offences under the Indian Penal Code and the Arms Act have been fully incorporated in the notice. It is further mentioned that the petitioner had proved himself to be a terror to the society and as such peace-loving people have apprehension of their safety at his hand and, therefore, the witnesses were reluctant to come forward to depose against him, which amounted to tampering with the evidence. I am inclined to the view that the contents of this notice are in more than sample compliance with the requirements of the statute. The writ petition is, therefore, without merit and is hereby dismissed.

Madan Mohan Prasad, J.,

I agree.