

(1957) 06 AHC CK 0003

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 961 of 1957

Mohd. Ishaq Ilmi

APPELLANT

Vs

The U.P. State and Others

RESPONDENT

Date of Decision : 21-06-1957

Acts Referred:

Constitution of India, 1950 — Article 19(1), 22, 22(5), 226
Criminal Procedure Code, 1898 (CrPC) — Section 491
Evidence Act, 1872 — Section 57
Preventive Detention Act, 1950 — Section 3(1), 7

Citation : AIR 1957 All 782 : (1957) CriLJ 1361

Hon'ble Judges : Takru, J; Biseshwar Dayal, J

Bench : Division Bench

Advocate : Syed Sadiq Ali and S. Haider Shaukat Abidi, for the Appellant; Shri Rama, Deputy Govt. Advocate and Sushil Kumar, for the Respondent

Final Decision : Allowed

Judgement

Takru, J.—This is a petition under Article 226 of the Constitution for the issue of a writ in the nature of habeas corpus directing the release of the petitioner who has been detained u/s 3(1)(a)(ii) of the Preventive Detention Act, 1950, as amended from time to time.

2. In order to appreciate the various points arising out of the impugned detention order a brief statement of the facts leading upto it are very necessary.

3. The petitioner was the printer, publisher and editor of an Urdu daily known as "Siyasat" in Kanpur. Sometime in May or June 1956 a literary and cultural institution of Bombay known as Bhartiya Vidya Bhawan republished a book entitled "Religious Leaders". This book had been written by two American authors and had been in circulation in a number of countries since 1941. There is no gainsaying that this book contains some highly objectionable and provocative passages about the character and dignity of the Prophet Mohammad which are likely to injure and hurt and in fact did injure and hurt the feelings of the Muslims

including the petitioner. The petitioner, therefore, with the avowed intention of getting the said book proscribed started a very spirited propaganda in his daily--the Siyasat,--quoting objectionable passages from the said book, accompanied at times with his own articles and comments thereon and preceded by prominent head lines designed to catch the attention of the reading public. The first of such publications appeared in the Siyasat of 28th August 1956 and they were repeated almost without any break till 16-9-1956. The offending passages having meanwhile come to the knowledge of the Registrar of the aforesaid Bharitya Vidya Bhawan he issued a communication which was published in the Pioneer of 4th September, 1956, expressing his regrets for the publication of the said book and ordering its prompt withdrawal from circulation. Sri. K. M. Munshi the then Rajyapal of Uttar Pradesh and general editor of the said Bhawan also issued a communication which was published in the Pioneer dated 6th of September, 1956 expressing his regrets for the said publication and assuring everybody concerned that he himself had the highest respect for the Prophet of Islam and his teachings and that he had ordered the withdrawal of the said publication forthwith. All these expressions of regrets and assurances about the prompt withdrawal of the offending book from circulation did not however succeed in achieving the desired result, because, as we have said above, the petitioner continued with his writings till 16th of September, 1956. On the night of 16th September, 1956 the petitioner was arrested by the Sisaman police Kanpur for committing breach of an order promulgated u/s 144, Cr. P. C. and was remanded to jail custody by a first class Magistrate of Kanpur the following day. The petitioner applied unsuccessfully for bail both before the Magistrate as well as the Sessions Judge on 25th September and 5th October, 1956 respectively. An application for bail was then moved on his behalf in this Court but was alleged to have been withdrawn as he had been ordered to be detained under the Preventive Detention Act. Thereafter on 9th November, 1956 the police submitted a charge sheet against the petitioner under Sections 147, 353, 332, 356 and 188, I. P. C. before a first class Magistrate of Kanpur but his trial under those sections has been held up for one reason or the other which need not concern us in the present proceedings. The position, therefore, is that the petitioner is at the moment under detention both under the ordinary law as well as the Preventive Detention Act.

4. In completing this narrative we have, we are afraid, gone a little beyond the date on which the petitioner was detained under the impugned detention order viz., 5th October, 1956. Three days later--i.e., on 8th October, 1956--the petitioner was served with the statutory notice u/s 7 of the Preventive Detention Act, (Act 4 of 1950) as amended from time to time. This detention order was subsequently confirmed on 1st of December, 1956 by the Advisory Board constituted u/s 8 of the said Act and the petitioner was informed by the Home Secretary of the U. P. Government on the 21st of December, 1956 that the Governor of U. P. had sanctioned the petitioner's detention for a period of 12 months from the date of his detention.

5. Having concluded our narrative of the material facts with which we are concerned in the present proceedings, we shall now return to the notice which was given to the petitioner u/s 7 of the Preventive Detention Act on 8th of October, 1956 and inasmuch as it- was assailed on a number of grounds by the learned counsel appearing for the petitioner, we propose to quote all the material parts of it in full. The said notice which is marked Annexure "A" and is to be found on page 29 onwards of the paper book after stating the usual preamble, runs as follows :

"Now, therefore, in pursuance of the provisions of Section 7 of the Preventive Detention Act, 1950 (No. 4 of 1950) as amended from time to time, you Sri Ishaq Ilmi are hereby informed that the grounds for your detention are, as stated below :

1. That you have with a view to promote communal hatred among them exploited the religious sentiments of the Muslims by working them up to a communal frenzy over republication of the book entitled "Religious Leaders" by the Bhartiya Vidya Bhawan, Bombay. Although this book was written by American authors H. Thomas and Dana Lee Thomas and published in the year 1941 and has been in circulation since then in many countries, the Bhartiya Vidya Bhawan republished it only two months ago. You have started and fomented intensive agitation among Muslim masses since 28-8-56 over the said republication through the columns of daily paper "Siyasat" of which you have been the Editor and Publisher. You have incited communal feelings of the Muslims by publishing provocative matters through the said daily with the object of promoting communal hatred among the Muslims, created disaffection and discontent among the Muslim, towards the Government and persisted in activities calculated to disturb the public peace and tranquillity, in spite of the fact that the Publisher and the General Editor have expressed their unqualified regret and also stopped sale of the said book and withdrawn its unsold copies.

2. The specific instances of the matter that you have published in the "Siyasat" to incite the Muslims to commit breaches of the peace are enumerated below:

(a) In the issues of Daily Siyasat dated 28-8-56, 30-8-56 and 31-8-56 you deliberately reproduced those extracts from the biography of Prophet Mohammad in the Book "Religious Leaders" which you considered to be objectionable and not fit for publication, under, highly provocative and inciting headlines along with your comments and Urdu translation of the original English text and thereby gave undue publicity to the extracts referred to above with the object of creating communal bitterness among the Muslims. (The relevant portions are enclosed in red lines in the attached copies of the Siyasat dated 28-8-56, 30-8-56 and 31-8-56.)

(b) You published a provocative appeal to the Muslims under inflammatory and provocative headlines in the issue of Daily Siyasat dated 29-8-56 at page 1 exhorting the Muslims to launch vigorous agitation to organise strikes, stage

fearless and courageous demonstrations and hold meetings in the mosques on 31st August, 1956, after prayers to protest against the aforesaid book, and pass resolutions urging the Government to dismiss Sri K. M. Munshi from his office and to take the action to punish him and proscribe the aforesaid book. (The relevant portion is enclosed in red lines in the attached copy of Daily. Siyasat dated 29-8-56).

(c) That you published an inflammatory statement alleged to have been made by one Abdul Rashid of Baisatkhana Kanpur at page 1 of the Daily Siyasat, dated 30th August 1956, under provocative headlines. The statement was to the effect that death was preferable to tolerance of insults to the Prophet and that the Muslims of the area in which Sri Abdul Rashid resided were full of anger and excitement over the matter published in the Book (The relevant portion is enclosed in red lines in the attached copy of Siyasat dated 30-8-56.)

(d) That you published a statement alleged to have been made by Sri Saidullah Khan Rizvi in the daily Siyasat, dated 31-8-56 at page 4 under provocative and inciting head-lines to the effect that this insulting and heart-breaking publication has left a permanent sore on the hearts of the Muslims and. it is one more instance of black deeds of the Congress regime and that Muslims should not allow repetition of such acts. (The relevant portion is enclosed in red lines in the attached copy of Daily Siyasat dated 31-8-56).

(e) That you published a news item in the daily Siyasat dated 1-9-56 at page 2, under highly provocative headlines to the effect that Muslims should sacrifice their lives, property etc., rather than tolerate even slightest insult to the Prophet and their religion and culture. (The relevant portion is enclosed in red lines in the attached copy of the daily Siyasat dated 1-9-56).

(f) That you published in the daily Siyasat, dated 1-9-56 at page 4, a statement under highly provocative and inflammatory headlines alleging that the publication of the said book, and education of Muslim children in Government schools, through the books which contain matter likely to affect adversely their religious teaching and beliefs are in pursuance of deep-laid conspiracy. (The relevant portion is enclosed in red lines in the attached copy of Siyasat dated 1-9-56).

(g) That you published an article in the Daily Siyasat dated 2-9-56 at page 1 under provocative headlines exhorting the Muslims to observe general strike on 7-9-56 throughout the country, fly black flags over shops and houses, wear black badges, hold meetings after Jumma prayers, vigorously agitate for legal action against the General Editor for proscription of the said book and continue agitation until their demands were conceded, (The relevant portion is enclosed in red lines in the attached copy of Siyasat dated 2-9-56).

(h) That you "published the inflammatory speeches delivered by you and Sarvasri Vimal Mehrotra, S. K. D. Paliwal, Shamshe Ninai, Saidullah Khan in a meeting convened by you in Mohammad Ali Park on 2-9-56,. in the Daily Siyasat dated 3-9-56 at pages 1 and 4 under inciting headlines. (The relevant portion is

enclosed in red lines in the attached copy of Siyasat dated 3-5-56).

(i) That you published a news item in the daily Siyasat dated 3-9-56 at page 4 under provocative headlines propagating that the agitation was spreading like wide fire and should not cease until their demands for dismissal of Sri K. M. Munshi and proscription of the book were conceded. (The relevant portion is enclosed in red lines in the attached copy of Siyasat dated 3-9-56).

(j) That you published editorial in the Daily Siyasat dated 4-9-56 at page 2 under provocative headlines that the Government was only secular in name and not in its actions, that it was of the major community, i.e., Hindus, specially of Brahmins, and that the Army was non-secular in its composition as the number of Muslims in the Defence Forces was going down day by day. (The relevant portion is . enclosed in red lines in the attached copy of the Siyasat dated 4-9-56).

(k) That you published an article in the "Siyasat" dated 4-9-56 at page 4 under inflammatory headlines exhorting the Muslims to continue the agitation until their demands were met, (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 4-9-56).

(l) That you published news items in the daily Siyasat dated 5-9-56 at page 1 under alarming and inflammatory headlines that communal disturbances had occurred at Agra and Moradabad and that refugees had been aggressor in the riot at Agra and that communalists had created disturbances in a meeting organised by Muslims to express their resentment over the book at Moradabad resulting in one death or injury to one man and the arrest of Maulana Qasim, who addressed the meeting. (The relevant portion is enclosed in red lines of the attached copy of the Siyasat, dated 5-9-1956).

(m) That you published a news item in the Daily Siyasat dated 6-9-1956 on page 1 under inciting headlines about the agitation and taking out of a procession by Muslim students of Oral and their shouting of slogans "K. M. Munshi Murdabad", "Governor U. P. Pursi Chhore". This news was published at a time when communal tension was rapidly increasing. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat, dated 6-9-1956).

(n) That you published a news item in. the daily Siyasat dated 6-9-1956 on page 2 under provocative headlines eulogising the action of Muslim students of Aligarh University, imputing motives to Jan Sanghis of Delhi and certain papers of defaming the Muslim students for the agitation and demonstration organised by them and inciting the Muslim students to continue the agitation until the demands were fulfilled. This news was given publicity at a time when the atmosphere was surcharged with communal bitterness. (The relevant portions are enclosed in red lines in the attached copy of Siyasat dated 6-9-1956).

(o) That you published an article in the daily Siyasat dated 6-9-1956 at page 4 under inciting headlines exhorting the Muslims to volunteer for offering satyagrah

at the house of Sri K. M. Munshi in order to force him to resign and also to offer satyagrah at the house of the Prime Minister and at the Parliament House in case Sri K. M. Munsif did not resign or was not dismissed. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 6-9-1956).

(p) That you published a news item in the daily Siyasat, dated 8-9-1956, at page 1 under alarming headlines that Jan Sanghis had held a meeting at Mau on 31-8-1956, in which they had raised slogans "khun ka badla khun" and planned for a serious riot in the town and that after the said meeting the Hindus had attacked members of the other community and that one man was killed and several others injured as a result of the riot. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat, dated 8-9-1956).

(q) That you published a news item in the daily Siyasat, dated 9-9-1956 at page 4 under inflammatory headlines that the communal disturbances at Moradabad, Orai, Gorakhpur and Bahraich had occurred in which peaceful Muslims had been attacked by Hindus as a result of which several persons had been killed and arrested. This news item was published when bitter communal feelings had been created between the two communities by you through your agitation. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 9-9-1956).

(r) That you published an article in the daily Siyasat dated 11-9-1956, at page 1 under highly provocative headlines that the spirit of Godse had entered the souls of those who were against this agitation and if the Muslims would yield to intimidation they would not be able to say even Namaz. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 11-9-1956).

(s) That you published an article in the daily Siyasat dated 12-9-1956 at page 1 under inflammatory headlines that the agitation should continue although the Congress, the Hindu Mahasabha and Jan Sangh have been trying to suppress it. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 12-9-1956).

(t) That you published a news item at page 4 of the daily Siyasat dated 13-9-1956 under inciting headlines laying the responsibility for communal riots on the Government and Hindu communal organizations, alleging that they have defamed the Muslims, (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 13-9-1956).

(u) That you published a news item at page 4 of the daily Siyasat dated 14-9-1956 under provocative headlines and charged the Government officials with communal bias against the Muslims and held them to be responsible for fanning communal disturbances; (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 14-9-1956).

(v) That you published a news item under inciting headlines in the daily Siyasat dated 15-9-1956 at page 2 that a narrow minded and communal class existed in

this country which believed that by insulting the religious leaders and wounding the religious beliefs of other communities they were doing a great national service. It has further been alleged that in the Congress regime in which religious protection has been assured the hearts of the people, evidently referring the Muslims are being broken, (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 15-9-1956).

(w) That you published an alarming news item in the daily Siyasat dated 16-9-1956 at page 1 under inciting and alarming headlines that the Jan Sangh and Hindu Mahasabha have started communal disturbances with the connivance of the Congress and that after Orai, Moradabad Jabalpur and other places, Aligarh has been made their target. In the meetings and processions, it was alleged heart-breaking communal slogans were shouted and communal bitterness created. It was further asserted that in a Varanasi meeting it was proposed to rename Aligarh as "Argun Garh" -and Muslim University as "Arya Vishwa Vidyalaya". (The relevant portions are enclosed in red lines in the attached copy of the Siyasat, dated 16-9-1956).

(x) That you published an alarming news item, at page 2 of the daily Siyasat dated 16-9-1956 under provocative headlines about the communal riot at Aligarh in which you accused Hindu students of Aligarh for their high handedness and precipitating communal riots in pursuance of a pre-arranged plan and also attributed inflammatory statements and objectionable slogans to them. (The relevant portion is enclosed in red lines in the attached copy of the Siyasat dated 16-9-1956.)

3. That as a consequence of incitement and provocation given to the Muslims by rabidly communal and inflammatory head-lines, news items and comments published in the Siyasat as mentioned in para 2 and the agitation started by you in the State, a number of incidents involving breaches of peace and public tranquillity took place in several towns of U. P., as mentioned below :

(a) That Daily Siyasat containing incitement to the Muslims was received in Aligarh on the morning of August 30, 1956. A general meeting of the Intermediate students of the Muslim University was held on 30th August, 1956, and speeches were made to the effect that the whole of the Islamic world was disturbed. On the 31st August, 1956 a meeting of the Aligarh Muslim Union was held. Resolutions were passed and the students took out a procession in which slogans of "Pakistan Zindabad" were shouted, which shows the extent to which feelings of the Muslims were roused by the matter published by you.

On the same date at a post prayer meeting presiding over by Sri Shabbir Khan highly inflammatory speeches were made. These meetings. and the procession gave rise to a strong wave of resentment among all other communities at Aligarh and there was a general feeling that the activities of the Muslims were treacherous and seditious. It was felt that a book which was published long ago had suddenly been utilized to incite the communal feelings of the Muslims.

Muslim mobs at Aligarh were worked up to a frenzy by the statement made by you that Sri K. M. Munshi was guilty of a most dirty offence against the whole Islamic world.

On the 1st of September, 1956, the boys of the schools attached to the Muslim University took out effigies of Sri K. M. Munshi in a procession. The girls of the Girls College attached to the Muslim University also went out in a procession shouting slogans "Pakistan Zindabad" and "Congress Raj Muradabad". On the same day a group of students gathered in the Polytechnic Section of the University and burnt the effigy of Sri K. M. Munshi and shouted slogans "Hans ke liya hai Pakistan, Lar ke lenge Hindustan" "Pakistan Zindabad".

As a result of subsequent matter published in the Siyasat between 4th and 6th September, 1956 in which appeals were also made to observe hartal on September 7, display of black flags and wear black badges, a meeting was held in Jama Masjid on September 6, 1956, under the auspices of Muslim Jammāt, and call for a hartal on 7th September 1956, was given. Accordingly a hartal took place on September 7, 1956, provocative meetings and processions were organised in which anti-national and anti-Government slogans were shouted, which incited the feelings of other communities and created a tense situation.

As a counter-agitation, a combined meeting of Hindu Mahasabha, Bhartiya Jan Sangh, Ram Rajya Parishad, R.S.S. Sangh and Arya Samaj was held on September 11, 1956, in which the Muslims were held to be responsible for communal disturbances at Agra, Muradabad, Mau, Orai, Bara Banki and bomb explosions at Delhi. On September 14, 1956, a procession of students (except Muslim University students) paraded the town shouting, among others, the slogan ""Panchmargi Bharat Chhoro" (fifth columnists leave the country).

While this procession was passing through the Bazar, the Muslims showered brick-bats as a result of which a communal riot took place in Aligarh. These incidents in Aligarh culminating into a communal riot are clearly attributable to the communal frenzy created among the Muslims by you.

(b) That at Orai the Muslims became communally excited on reading inciting news published by you in the Siyasat dated the 30th August 1956. A procession of the Muslims was taken on September 1, 1956, to the residence of the District Magistrate in the evening and on the same day a meeting of the Muslims was held in Mohalla Athai. Resolutions were passed which criticised Sri K. M. Munshi and demanded a. ban on the book and legal action against the Publisher. As a result of the processions and the meeting communal bitterness pervaded the town.

The Siyasat dated 3-9-56 told the Muslims to observe complete hartal, organize public meetings, wear black bands on arms, and hoist black flags on September 7, 1956. On the 7th September, 56 the Muslims displayed black flags on their houses and shops and wore black bands on their arms. Some Muslim students of Government Intermediate College, Orai, attended their classes with black bands

on their arms but absented themselves from the prayers, which was resented by the Hindu students who left the College at 11-30 A.M. and formed a procession which started shouting among others, the following slogans :

""Pakistan Murdabad." "Kale Jhande Phank do."

"Pakistani Gunda Shahi Nahin Chalegi." "Legi Musalmano Bharat Chhoro." When the procession passed by the Nabi ki Masjid some students hauled down a black flag from a shop. Some Muslims came out of the adjoining lanes and stabbed some students. In the rioting that ensued one Bishambhar Dayal Raizada a prominent citizen of Orail, was stabbed to death, which caused anger among the Hindus, particularly refugees, who looted some shops and stabbed some persons. As a result of rioting eight persons lost their lives. The Muslims at Orail were aggressors in committing serious acts of violence due to communal frenzy and excitement created by your agitation and publication in the Siyasat.

(c) That the Muslims of Moradabad started communal agitation on the 2nd of September 1956, after leading bitterly communal and inflammatory matter published by you in the Siyasat. The Muslims held A meeting on the 2nd of September 1956 in which highly inciting speeches were made. A Hindu youth present in the meeting stood up and protested against the anti-national speech of one of the speakers. Violence was used against him and a case of rioting was registered, as consequence of which some Muslims were arrested on September 6, 1956. A mob of agitated Muslims raided the Kotwali where the arrested persons were detained. The Muslims were dispersed with a lathi charge. Thereafter stray incidents of stabbing and marpit took place throughout the city and curfew had to be imposed.

(d) That as a result of bitterly communal and inciting articles published in the Siyasat of Kanpur by you a procession of Muslims students was taken out in Agra city on 3rd September 1956. This was followed by another procession of Muslims, which reached the Sheo Market shouting, among others, the slogan "Pakistan Zindabad" which was resented by the refugees on whom some processionists threw brickbats, as a result of which one refugee was injured. Thirteen of the processionists were arrested at the spot.

(e) That the Muslims at Bareilly were communally excited on reading the daily Siyasat dated the 29th and the 30th August 1956, which were read out to the Muslims by the workers of Jammāt Raza Mustafa, Bareilly and held a number of meetings in various mohallas inciting frenzy and bitterness. On September 7, 1956 a procession of Muslims shouted anti-national slogans "Hindustan Murdabad" "Pakistan Zindabad". About the same time some members of the Hindu Mahasabha, Bhartiya Jan Sangh and a number of refugees started counter demonstration and shouted counter slogans. At the crossing of Maniharan ki Gali when the Muslims were returning from Jumma Prayer, there was exchange of hot words between them and the Hindus, which resulted in brick-battling between the sides resulting in injuries to 24 persons.

(f) That on account of the communal frenzy created among the Muslims by publication of inciting matter by you in the "Siyasat" in respect of the book "Religious Leaders" protest meetings were held in most of the mosques of Kanpur city on 21st August 1956, after Jumma prayers. Oaths were taken from the Muslims that they would always be ready to "sacrifice themselves and their children and would be ready to face bullets of the police." A public meeting was held inside the Idgah (Faithfulganj) from 2 to 4 P.M. on 31st August 1956 the sentiments of the Muslims present were whipped into communal frenzy by the inflammatory speeches exhorting them that the forefathers had killed those persons, who had insulted their prophet and religion.

In this meeting a loudspeaker was used without any permission with the result that a case u/s 118 of the Cantonment Act has been registered against the organizers of the meeting and those who spoke at the meeting. Two public meetings one each at Mohd AH Park and Faithfulganj were . held on the 2nd of September 1956, in which the speakers communally incited the Muslims present. As a result of communal bitterness created among the Muslims elaborate law and order arrangements had to be made to prevent breaches of the peace in the city.

(g) That on the night between the 7th and 8th September, 1956, you held a secret meeting in your house in Kanpur in which you appointed some persons to carry out communal agitation in the following districts of the State :

1. Lucknow
2. Varanasi
3. Azamgarh and Mau
4. Aligarh
5. Ghazipur
6. Gorakhpur
7. Agra
8. Balrampur (Gonda)
9. Allahabad
10. Faizabad
11. Jaunpur
12. Farrukhabad
13. Barabanki
14. Bareilly
15. Basti

16. Unnao.

You exhorted those present in this meeting, that agitation should continue until the Government took action against publication of the book and the Governor was dismissed. You said that volunteers should be enlisted for offering "Satyagraha" and taking resort to hunger strike in front of Council House and Government House, Lucknow. Consequently Sri Wazarat Shikoh resorted to hunger strike at the council House on 10th September, 1956 and was arrested.

In another secret meeting held at your house on the night between the 8th and 9th September, 1956 you told those present that section 144 Cr. P. C., should be defied in the city. You condemned the counter agitation launched by the Hindus. You also asserted that the major community that is the Hindus, was carrying on counter agitation with the connivance of the Government. You also suggested that workers should be sent to those districts in which there was no agitation.

(h) That on the 16th September 1956 at Kanpur, you suggested to your co-workers that the Muslim fire-arms licence holders should be told that they should use their firearms in cases there was need to do so. You told them that the Hindus were carrying on counter-agitation at the instigation of the Government and should be taught a lesson. In mohalla Bansmandi, Kanpur, on the same date, you told your workers that under the Congress regime the interests of the Muslims were at stake. It was high time to remove the Government. The Muslims should be told to repeat the history of Karbala at this juncture. In mohalla Fahimabad, Kanpur you instigated the Muslims to launch "jehad" against the Government.

It is that you were determined to create communal frenzy and hatred against the Hindus on the 16th September 1956 and advocated violence against them. When in the evening of the 16th September 1956, at about 8 p.m. some of your co-workers informed you about the proceedings of the meetings held by the Hindu Maha Sabha at Arya Samaj Hall, Kanpur, on the same evening and told you that slogan of "Ishaq Ilmi Murdabad" was shouted and the "Holy Quran" was dishonoured you told your colleagues that time had come to take severe action against the Hindus. You exhorted them to run to their mohallas and alert the Muslims to be prepared for all eventualities.

You and a number of your followers came out in communal excitement armed with lathis and dandas on the public road in front of your office deliberately violating orders u/s 144 Cr. P. C., which were in force in the city. The police reached the spot at the nick of time. You and your followers offered resistance to the police during arrest and caused injuries to some police officers and also attempted to seize the revolver of a sub-inspector of police. Eventually the police over-powered you and others by application of force and arrested you and some of your followers. Some made good their escape. It is evident that you were bent upon creating communal riot in the city on that night and if you and your followers had not been arrested there was every likelihood that Kanpur would

have been in throes of a serious communal trouble.

4. That you have been a fanatical communalist and as a result of your rabidly communal activities to agitate and excite Muslims in the past the following action had to be taken against you :

(a) That you were arrested in Kanpur on the 29th March 1950, u/s 151 Cr. P. C., for communal activities and released after two months.

(b) That you were arrested on 2nd May 1951, u/s 151 Cr. P. C., for publishing an objectionable headline in your paper "Siyasat", dated 1st May 1951, regarding rumours of killing of children by Kanpur refugees and sale of their cooked flesh at Kanpur Hotel owned by the refugees.

(c) That in August 1951 you propagated cow slaughter in the open and had to be arrested u/s 107/117 Cr. P. C.

(d) That you were arrested on the 12th August 1952 in connection with Amrit Patrika agitation and detained under the Preventive Detention Act. You were released on 20-8-1953.

(e) That you were arrested on the 29th January 1954, u/s 107/117 Cr.P.C. by Sisamau police in Kanpur for communal activities and sent to Aligarh to stand your trial u/s 124A, I. P. C. You were released after the trial in January 1955 and resumed your communal activities again."

5. Learned counsel appearing for the petitioner attacked the validity of the said detention on a number of grounds. Briefly stated his contentions were :

(i) That in publishing passages from the said book and his comments thereon in his daily, the petitioner was exercising his fundamental right of freedom of speech and expression guaranteed to him by the Constitution and that in doing so he had not transgressed the permissible limits.

(ii) That some of the grounds for the petitioner's detention were irrelevant and vague and had no proximate or rational connection with the maintenance of public order; and

(iii) That for various reasons, which we shall enumerate later on in the course of our judgment, the order of detention was a mala fide one.

His contention, therefore, was that for the reasons aforesaid the detention of the petitioner under the Preventive Detention Act was illegal, and he was entitled to be set at liberty forthwith.

6. At this stage it would be appropriate to mention that the learned D. G. A. appearing for the opposite-parties while countering all the contentions of the learned counsel for the petitioner urged two further points in his turn, which we regard in the nature of preliminary objections and as they concern the competency and maintainability of the petition itself we consider it proper to notice them first before going on to the main contentions in the case.

7. The first point raised by the learned D.G.A. was with regard to the competency of the petition itself. According to him the point which has to be seen in all habeas corpus petitions is whether the detention of the petitioner was lawful at the material time--material time according to him being the date of the return of the notice to the detaining authorities, though in the present case he argued the detention was lawful even with respect to the date of the petitioner's arrest, the date of his filing the habeas corpus petition and even the date of the hearing of his petition in court.

According to him if on these dates the petitioner was anyhow in lawful custody i.e., apart from his detention under the Preventive Detention Act, the habeas corpus petition would have to be dismissed on that point alone. He based this argument on the fact that apart from his detention under the Preventive Detention Act the petitioner was also in detention under Sections 147, 188, 356, 332 and 352 I. P. C., his applications for bail having been either rejected by the courts concerned or withdrawn by him. The petitioner being, therefore, in lawful custody anyhow the present petition was infructuous as it would not help to secure his release from detention.

Learned counsel appearing for the petitioner has countered this by saying that in every habeas corpus petition the detaining authorities are required to justify the detention in question. If they cannot justify that the petitioner is entitled to an order of release and if he is required to be kept under custody under some other valid arid lawful order the said order of release can always be made a conditional one. Otherwise, he argued, the petitioner who was detained both under the ordinary law where he could apply for and possibly get bail and the Preventive Detention Act which he attacks as being unlawful is in the impossible position of not being able to secure his release from detention under any circumstance.

His application for bail under the ordinary law would be checkmated because of his detention under the Preventive Detention Act, and his habeas corpus petition against his detention under the Preventive Detention Act because of his detention under the ordinary law. Having heard learned counsel for the parties on this part of the case we are of the opinion that in proceedings under habeas corpus petition what the courts have to see is whether the particular detention complained of is lawful or not. If not lawful the courts would order the release of the petitioner from detention under such a detention order.

If the petitioner is also being held in detention under some other valid and lawful order the order that the court would pass would naturally have to be a conditional one. We find support for the kind of the order which is to be passed under such circumstances from the cases of *Labaram Deka v. The State*, AIR 1951 Assam 43 (A), and *Hanwant Singh v. State of Rajasthan*, AIR 1955 Raj 1480 respectively wherein the orders for the release of the petitioners were couched in similar terms.

8. The second point raised by the learned D.G.A. in this very connection was that

inasmuch as an order directing the release of the petitioner, in a case in which he was also in lawful custody under the ordinary law, would be infructuous we would not grant the relief prayed for on the principles of *brutum fulmen*. We have considered this argument of the learned D.G.A. but do not find ourselves in agreement with it. If the order is passed in the conditional form as stated above the petitioner having secured to get the main impediment removed from his way could try for his release on bail for offences under the ordinary law.

Besides, it is to be remembered that in the present case the petitioner was refused bail by the learned Sessions Judge not because of any special gravity of the offences with which he was charged, but because of the "communal tension" which prevailed in Kanpur at that time. Indeed he had gone so far as to state in the order itself that

"there would be no justification to detain the applicant in the lock up after the tension" (by which he meant the communal tension which was prevalent in Kanpur at that time)" is over. The applicant may (again) apply for bail to the learned magistrate."

9. It was then argued by the learned D.G.A. that the proper procedure which the petitioner should have adopted was, to get, if possible, an order for his release on bail first and then to have approached this court for his release from detention under the Preventive Detention Act. We have considered this contention of the learned D.G.A. but are not prepared to deny the petitioner the relief which he is claiming provided he makes out a case for the granting thereof on such technical and tactical grounds of what he should have done first and what afterwards.

The provisions of the Preventive Detention Act have been held to be serious inroads upon the fundamental rights of the citizen and we are not, (therefore, prepared to refuse the relief merely on the ground as to what should have been done first and what afterwards provided the case is otherwise appropriate for the granting of the said relief. We, therefore, reject the learned D.G.A./S contentions on this part of the case.

10. The second preliminary point raised by the learned D.G.A. was that as the petition was made at a very belated stage and was not a bona fide one, the present case was not an appropriate case in which the court would grant the relief prayed for. Our attention was drawn in this connection to certain material dates which are as follows :

1.

Date of arrest of the petitioner

16-9-56

2.

Order under the Preventive Detection Act served on the petitioner

5-10-56

3.

Grounds of detention served on the petitioner

8-10-56

4.

Information to the petitioner that the Government had approved of the District Magistrate's action of detention of the petitioner

12-10-56

5.

District Magistrate informs the petitioner that the petitioner had to make his representation by 3-11-56

1-11-56

6,

Representation made by the petitioner forwarded to the State Government

2-11-56

7.

Advisory Board confirms the detention order

31-12-56

8.

State Government's order fixing the period of the petitioner's detention for one year from the date of his detention

18-12-56

9.

Aforesaid order of the State Government served on the petitioner

21-12-56

10.

Copy of the present habeas corpus petition served on Advocate General Uttar Pradesh

23-4-58

11.

Present habeas corpus petition filed and admitted. in the High Court,

16-5-56

11. Learned D.G.A. argued that the present petition was a mala fide one as would be apparent from the dates given above. According to him the petitioner should have filed his petition with the utmost expedition, after the order of the Governor fixing the period of the petitioner's detention for one year was served on him on 21-12-56. His delay in not doing so till the 16th of May, 1957 or even the 23rd April, 1956 would disentitle him to the relief which is only granted in appropriate cases. In this connection two cases were" cited .before us one by the learned D.G.A. and the other by the learned counsel for the petitioner, namely, the cases of In the matter of Omrith Lall Dey reported in ILR 1 Cal 78 (C) and Mehnga Ram Vs. Labour Appellate Tribunal of India at Lucknow and Another, , respectively. In both these cases, we find that though delay was held to be a ground for refusing the relief prayed for it was also held that it could be condoned in appropriate cases. In the present case, the reasons for the delay are stated in paragraph 51 of the affidavit which was filed on behalf of the petitioner along with the main petition on 16-5-57. In this paragraph which was only formally denied by the opposite-parties in paragraph 63 of their counter-affidavit, the reasons for the delay are stated as follows :

"(51) That the applicant has nobody to look after his case. The deponent is old, ill and too weak. He has been ailing with heart troubles since September 1956. He has cataract in his eyes and cannot perform his avocations of life easily. The applicant's wife and mother are pardanashin ladies who cannot go out in public for pairvi of the case. The applicant's younger brother is a mere student and has been terror-stricken.

The application of the applicant could not, therefore, be presented earlier for the said reasons as well as for want of facility by the authorities to which he is legally entitled."

This affidavit was sworn to on the 11th of April, 1957 and a copy thereof was served along with a copy of the petition on the Advocate General U. P. on the 23rd of April, 1957 though the petition itself was filed in court on the 16th of May, 1957. There was thus an interval of 12 days according to one calculation and 24 days according to the other, depending upon whether the 23rd of April, 1957 or the 16th of May, 1957 is to be regarded as the material date.

Learned counsel appearing for the petitioner stated that the intervening period was spent in obtaining legal advice and in preparing the case for arguments in court. We find the circumstances of the present case very similar to those which obtained in Mehnga Ram Vs. Labour Appellate Tribunal of India at Lucknow and Another, . In that case an order granting leave to the employer to dismiss workmen was passed by the Labour Appellate Tribunal on 17-3-55. Thereupon the appropriate Government was moved under the Proviso to Section 13(1), Industrial Disputes (Appellate Tribunal) Act to modify the award of the Appellate Tribunal on 29-3-55. This representation was rejected on 16-4-55.

Thereafter an order dismissing the applicants was passed on 23-4-55. Appeal against this order was dismissed on 3-5-55. Legal opinion was then consulted and some doubt was expressed as to whether the Supreme Court should be moved or the High Court of Pepsu or the Allahabad High Court. Eventually the lawyers advised in the middle of June 1955 that the Allahabad High Court should be moved but that Court had already closed for summer vacation. The application under Article 226 was prepared on 7-7-55 and copies of the application were served on the standing counsel on 20-8-55 and the application was filed on 12-9-55."; and it was held that there was no such delay as to justify the rejection of the application merely on that ground. In the Calcutta case (C) also (ubi supra) the learned Judge observed as follows :

"There still remains a point to be considered. On a comparison of the dates it appears that the arrest and commitment took place two months ago and unless this interval had been accounted for, this Court would not interfere on habeas corpus. It is incumbent on the applicant in a case of this kind to come at once to the Court "without delay. But I find in that part of the affidavit o? the prisoner which I have not read out that this time was consumed by fruitless application to the Small Cause Court for release. I am, therefore, of opinion that the delay does not serve to disentitle the applicant to his discharge."

12. The principle which can be deduced from these two authorities is that in cases in which the petitioner does not come to court for redress at the earliest opportunity, the courts shall refuse the relief prayed for, unless the petitioner is able to satisfy the court that there is good and valid reason for the delay. Neither of these cases supports the proposition which was urged by the learned Deputy Government Advocate namely, that delay in filing the petition is by itself such a fatal defect as to disentitle a petitioner to the relief he wants. We have therefore, to see whether in the present case the petitioner has made out a case for the condonation of the delay.

We have earlier set out the reasons for the delay as given in the affidavit filed on behalf of the petitioner and in the absence of anything to the contrary we hold them to be good grounds for condoning the delay upto the 11th April, 1957 the day on which the said affidavit was sworn to. It is obvious that thereafter some time must have been taken in seeking and obtaining legal advice and in preparing a case of such complexity and bulk as the present one. Having regard, therefore, to all the circumstances of the case we are of the opinion that the delay in filing the present petition has been satisfactorily accounted for and we would therefore, not be justified in rejecting the petition on that ground.

13. Having disposed of the preliminary points raised by the learned Deputy Government Advocate we now proceed to the consideration of the main contentions raised in the petition itself.

14. The first contention of the learned counsel for the petitioner was that it was the fundamental right of every Indian citizen, who was so minded, to criticise the

Government, and even to create disaffection against it and to advocate the overthrow thereof so long as he did not advocate the use of violence and there was no incitement to use violence or to resort to other illegitimate means. If he did not do any one of these things his detention under the Preventive Detention Act could not be justified.

In support of this contention of his he has relied upon the cases of Ahmad Ali Vs. State, , and Sarju Pandey Vs. State, . We have heard the learned counsel at some length on this point and have not been impressed with his arguments. We are not prepared to place the limited construction on the restrictions which can be placed on the right of freedom of speech and expression of the subject guaranteed to him under the Constitution, which the learned counsel is contending for.

In our opinion not only would advocacy to violence or incitement to use violence or resort to other illegitimate courses be considered good grounds for inferring that the public order would not be maintained but also the expression of views which would normally tend to disturb public order, peace and tranquillity would be considered good grounds for that purpose. In other words if the expression of views is tantamount to a veiled incitement to violence or is otherwise prejudicial to the maintenance of public order, then in our opinion it matters little whether violence or incitement to use violence or resort to other illegitimate courses is openly advocated or not. What has to be seen in all such cases is the effect which the expression of such views, judged from ordinary standards, would have on the people for whose consumption those views are being expressed.

If in the ordinary course of things such views would tend to disturb the public order, peace and tranquillity then no matter how guardedly they may be worded, the order of detention would be justified. A "rational" or "proximate" connection would then be established between the acts complained of and the apprehension of breach of public order, peace and tranquillity resulting therefrom, sufficient in our opinion to justify the detention under the Preventive Detention Act. In such cases the freedom of speech and expression guaranteed by the Constitution is subject to the restrictions which have been validly placed upon it by the Preventive Detention Act in the interests of public order, peace and tranquillity.

In our opinion the passages published and the views expressed by the petitioner in his paper to which our attention has been drawn would normally tend to excite the Muslims and to incite them into breaking the public peace, order and tranquillity even though in the same article they might have been advised not to lose their heads and not to do anything that would have the effect of jeopardising the cause for which the petitioner was making such strenuous efforts.

It is a notorious fact of which we were justified in taking judicial notice that in cases in which communal feelings have been exploited and communal frenzy has been worked up, violence has invariably resulted sooner or later whether such

violence was advocated or not. We are not, therefore, prepared to accept the contention of the learned counsel for the petitioner that unless a person advocates violence or incites people to use violence or other illegitimate courses, he cannot be legally detained under the Preventive Detention Act.

It would thus be a question of fact in each case whether the views expressed are of one kind or the other. The test in all such cases would be whether there is any "real" and "genuine", or as it has been sometimes described "proximate" and "rational" connection between the acts complained of and the apprehension of the disturbance of public peace, order and tranquillity likely to result therefrom. In other words there should be a dear and direct connection between the acts complained of and the likelihood of their leading to breach of public peace and tranquillity.

If, however, the acts complained of were likely, but only remotely, to lead to breach of public peace, order and tranquillity then such acts would not justify detention under the Preventive Detention Act. (vide cases of *Sodhi Shamsheer Singh and Others Vs. The State of Pepsu and Others*, ; *Basudeva Vs. Rex*, , and approved by the Federal Court in *Rex v. Basudeva*, AIR 1950 FC 67 (I), and *Ram Manohar Lohia Vs. The Supdt., Central Prison, Fatehgarh and Another*, .

15. Learned counsel appearing for the petitioner has cited the cases of *Ahmad Ali v. State* (E), and *Sarju Paudey v. State* (F) (ubi supra) in support of his contention referred to above, but in our opinion those cases do not purport to lay down anything contrary to what we have said above. The point whether the act complained of which was not accompanied by advocacy to violence or incitement to use violence or resort to other illegitimate courses but which was bound in the ordinary course of thing to lead to violence and the disturbance of public peace order and tranquillity did not arise directly in those cases and we, therefore, do not feel ourselves precluded from taking the view which we have stated above.

16. This brings us to the second and in our opinion the most formidable point raised by the learned counsel for the petitioner, namely, that as some of the grounds mentioned in the notice u/s 7 of the Preventive Detention Act are either vague or non-existent or irrelevant and as the said grounds are such as might reasonably be expected to have affected the subjective satisfaction of the detaining authorities the detention order in question cannot be upheld.

In support of this contention learned counsel took us through the entire Notice which we have quoted in the earlier part of our judgment, to show that a number of grounds were either vague or irrelevant or non-existent for the purposes of the said Notice. According to him the detention order was sought to be justified on a number of grounds which are stated in paragraphs 1 to 4 of the said Notice. According to him the grounds contained in paragraph 1 of the said Notice suffered from two defects :

(1) that they were vague; and

(2) that they showed that the subjective satisfaction of the statutory authority was based on a consideration of two factors :

(a) that the petitioner with the object of promoting communal hatred among the Muslims created disaffection and discontent among the Muslims towards the Government, and

(b) persisted in activities calculated to disturb public peace and tranquillity; and as (a) was an irrelevant consideration, the said grounds suffered from the defect of irrelevancy.

17. As for paras. 2 to 4 of the said Notice his contention was that the exception of sub-paras. (c), (e) and probably (r), of para. 2 and sub-para (e) and probably (f), of para. 3, the remaining sub-paragraphs of paras. 2 and 3 and para. 4 contained grounds which were either vague or non-existent or irrelevant for the purposes of the said Notice; and as vague and non-existent and irrelevant grounds had been mixed up with those which did not suffer from those defects and as it was not possible to say to what extent the said vague or non-existent and irrelevant grounds did not influence the subjective Satisfaction of the defaming authorities, the detention order was bad as a whole and could not be upheld.

We have examined the said Notice very carefully and are of opinion that except for one point, which we shall presently state and discuss, the said Notice is absolutely unimpeachable. We are satisfied on perusing the said Notice that the grounds and reasons for the detention are contained in para. 1 of the said Notice and that paras. 2 to 4 are only a compendium of the facts and particulars on which the subjective satisfaction of the statutory authority was based for coming to the conclusions mentioned in para. 1 of the said Notice. Any vagueness, irrelevancy or the like in the facts and! particulars supplied would not affect the validity of the detention order so long as the grounds furnished do not suffer from any of those defects.

The law on this point is so well-settled that we do not propose to burden our judgment with anything more than a bare reference to the. cases which contain it (vide *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, and in *Sodhi Shamsher Singh and Others Vs. The State of Pepsu and Others*, .) We, therefore, feel justified in the view that we have taken both on a plain reading of Article 22(5) and 22(6) of the Constitution and on the authority of the Supreme Court decisions cited above. Indeed it would be an act of extreme presumptuous-ness on our part even to hope to add to or improve upon what -their Lordships of the Supreme Court have so clearly laid down as the law on that subject.

18. We will now notice the contention of the learned counsel appearing for the petitioner with respect to para. 1 of the said Notice viz., that the grounds mentioned in para. 1 of the said Notice also suffer from the defects of vagueness and irrelevancy. So far as the first of those defects is concerned, we are satisfied that the grounds stated in para. 1 do not suffer from vagueness of any kind. That

paragraph sets out the grounds on which the detention of the petitioner was based in clear and unequivocal language. We do not see anything vague and ambiguous in them, and therefore, the said Notice cannot be held to be bad on that ground.

19. We shall now advert to the point, but for which, we said earlier in the judgment, the said Notice was absolutely unimpeachable, and that is the second point which was raised by learned counsel for the petitioner for attacking the validity of para. 1 of the said Notice. His contention in this connection has been stated before but may be usefully repeated here. According to him para. 1 of the said Notice as it was worded showed that the satisfaction of the detaining authorities was based on a consideration of two factors:--

(1) that the petitioner with the object of promoting communal hatred among the Muslims created disaffection amongst them towards the Government; and

(2) that he persisted in activities calculated to disturb the public peace and tranquillity. His contention was that so far as the first of these considerations was concerned, it was an irrelevant consideration and as it could not be said as to what extent the satisfaction of the detaining authorities was not based upon the first consideration--the test being purely subjective--the said Notice was bad as a whole and the detention order was likely to be set aside. In support of his contention the learned counsel for the petitioner cited the latest authority of the case of Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir, . We have given this contention of the learned counsel our very careful attention and we are of the opinion that it must be sustained.

Indeed the latest pronouncement of the Supreme Court reported "in the case of Dwarka Das Bhatia v, The State of Jammu and Kashmir (1) (ubi supra), leaves no room for doubt on this point, and since we intend resting our judgment on the authority; of the said case we propose referring to it in somewhat greater details than would otherwise be warranted. In that case the Government of Jammu and Kashmir had detained the petitioner by virtue of an order passed under Sub-section (2) of Section 3 taken with Sub-section (1) of Section 12 of the Jammu and Kashmir Preventive Detention Act 2011.

The petitioner was first placed under detention by virtue of an order passed by the District Magistrate, Jammu, under Sub-section (2) of Section 13 of the Act and that order was confirmed and continued under Sub-section (1) of Section 12 of the Act by the Government after taking the opinion of the Advisory Board. Both the orders. of detention recited that the petitioner was directed to be detained because it was necessary to make such an order:

"with a view to prevent him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community."

20. The grounds of detention which were supplied to the petitioner in that case were:

"1. That you carried on smuggling of essential goods to Pakistan through the Ferozepur and Amritsar border, but since the tightening of said borders you have recently shifted your smuggling activities to Ranbirsinghpura-Pakistan borders in the State of Jammu and Kashmir and are carrying on illicit smuggling of essential goods such as cloth, zari, and mercury to Pakistan through this border (thus affecting the economic condition of the public in Kashmir State adversely).

2. That for the said purpose of smuggling of goods to Pakistan you went to village Darsoopura on 7th April 1956, and contacted Ghulam Ahmad, son of Suraj Din, resident of Darsoopura Tehsil, Ranbirsinghpura and one Ram Lal, son of Prangi, resident of Miran Sahib Tehsil, Ranbirsinghpura and others who similarly are addicted to carrying on such a smuggling business and with their aid made arrangements for export of Shaffon cloth worth Rs. 2,500 to Pakistan through Ranbirsinghpura-Pakistan border.

3. That on 11-4-1956 you booked 3 bales of silk cloth through Messrs. Jeigopal Rajkumar Shegal of Amritsar to Jammu and Tawi and got these bales on address of yourself, and on the same day you got one package of Tila booked through S. Kanti Lal Zarianwalla of Amritsar and got this package also addressed To Self for Jammu Tawi.

4. That after booking these packages as aforesaid you came over to Jammu and waited for their arrival and contacted Ghulam Ahmed and Ram Lal the above mentioned persons.

That on the 15th April 1956, you tried to get the transport receipt from the Punjab National Bank but did not succeed in doing so as it was a public holiday. Meanwhile your activities leaked out and the goods were seized by the Central Customs and Excise Department of India.

5. There are other facts also but those cannot be given as I consider their disclosure would be against the public interest.

That by resorting to the above activities you have been and are acting in a manner prejudicial to the maintenance of the supplies and services essential to the community."

21. From the above grounds the Supreme Court held that the reason for the detention was the alleged -

""illicit smuggling of essential goods such as cloth, zari and mercury to Pakistan through the border, thereby affecting the economic condition of the public in Kashmir State adversely."

In the particulars which were supplied to the petitioner in that case only cloth and zari were mentioned thus indicating that probably the smuggling of these two items was not of an inconsequential nature. Later on it was found that cloth and zari were not essential articles but there was no material before the Court to show that the smuggling of these two articles was of an inconsequential nature.

The Supreme Court after a full review of the authorities on this point came to the following conclusion:

"The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based.

If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority.

It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The Court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged.

In this case, the order of detention is based on the ground that the petitioner was engaged in unlawful smuggling activities relating to three commodities, cloth, zari and mercury of which two are found not to be essential articles. No material is placed before us enabling us to say that the smuggling attributed to the petitioner was substantially only of mercury and that the smuggling as regards the other two commodities was of an inconsequential nature. On the other hand the fact that the particulars furnished to the detenu on 31st May 1956, relate only to cloth and zari (we understand that tilla referred to in para. 3 is zari) indicates that probably the smuggling of these two items was not of an inconsequential nature."

Applying the aforesaid principles to the facts of the present case we find that in para. 1 of the said Notice the reasons or the grounds for the detention order are stated to be:--

- (1) that the petitioner had created disaffection and discontent among the "Muslims towards the Government and
- (2) that he persisted in activities calculated to--disturb public peace and tranquillity.

22. As we read this paragraph it strikes us that the subjective satisfaction of the

detaining authority could be based on an appraisal of both these considerations. It is not open to us to say as to what extent it was based on one or other of these considerations. But if one of them is shown to be either irrelevant or non-existent the detention Order must be set aside on the authority of the case of *Dwarka Das Bhatia v. The State of Jammu and Kashmir* (1) (ubi supra).

So far as carrying on activities which have the effect of creating disaffection among the Muslims against the Government are concerned, we have, we hope, sufficiently clearly indicated our mind earlier in the judgment that such activities cannot per se be regarded as objectionable so long as they do not advocate violence or incite the use of violence either overtly or impliedly. As a matter of fact in the case of *Ahmad Ali v. State* (E) (ubi supra), a learned Judge of this Court held:

""Spread of disaffection against a party Government cannot be said to be a ground for inferring that the public order cannot be maintained. It is the right of every citizen in a democratic Government to spread disaffection against a particular party Government. This right, is of course, subject to the condition that the disaffection should not be so spread as to result in violence and there should be really no incitement to use violence or to resort to other illegitimate course."

and this case was cited with approval in *Sarju Pandey Vs. State*, , in the following words :--

"Spreading of disaffection against a party Government cannot be said to be a ground for inferring that the public order would not be maintained. It is the right of every citizen in a democratic Government to spread disaffection against a particular party Government. That right is, of course, subject to the condition that the disaffection should not be so spread as to result in violence and there should be really no incitement to use violence."

23. The petitioner in the case before us did no more than try to create disaffection amongst the Muslims against the Government. There is no allegation that in his efforts to create disaffection he either advocated violence or incited the Muslims to use violence or resort to other illegitimate courses or that violence took place, as a result of the disaffection created amongst the Muslims against the Government. In para, 3 of the said Notice a number of violent incidents are stated to have taken place but they are attributed to the communal feelings and passions roused by the petitioner by his writings and not to disaffection that the petitioner may have created against the Government.

The spreading of disaffection against a party Government has been repeatedly held to be the right of every citizen in a democratic Government subject to the condition that there should be no advocacy to violence or incitement to use violence or to resort to other illegitimate means. The petitioner, in our opinion, cannot therefore be said to have done anything illegal and his detention, inter alia, on the ground of spreading disaffection against the Government in the

absence of anything to show that the said ground was of an "inconsequential nature" cannot be upheld.

We are, therefore, of the opinion that one of the grounds given in para. .1 of the said Notice suffers from irrelevancy and for that reason the detention of the applicant under the Preventive Detention Act cannot be upheld and the order on which it is based must be quashed.

24. In the view that we have taken above it was not really necessary for us to decide the third and the last point raised by the learned counsel for the petitioner viz., the question of the mala fides of the detention order, but as it was argued at some length before us, we propose to deal with it also in the course of our judgment.

25. The third point raised by the learned counsel for the petitioner was that the detention order in question was made by the authorities concerned in mala fide exercise of their power and as such also it was liable to be set aside. He based this part of his case on the following five grounds:--

Firstly: That as the applicant was already under arrest and under detention for alleged offences under Sections 147, 333, 323 and 188 of the Indian Penal Code and as one of these was a non-bailable offence there was no necessity for the applicant's further detention under the Preventive Detention Act.

Secondly: That the detention order was passed in an unseemly hurry on the 5th of October 1956, immediately after the learned Sessions Judge had passed his order refusing bail to the petitioner on the ground that there was too much communal tension in the city at that time, but observing that the applicant could apply for bail again after the said tension was over.

Thirdly: That the ordinary law was sufficient to meet the situation and it was not necessary to resort to the extra-ordinary powers under the Preventive Detention Act,

Fourthly: That the detention order was passed in a fit of anger because the petitioner had ventured to criticise the Government and Sri K. M. Munshi; and

Fifthly and lastly: That the extracts of the writings of the petitioner on the basis of which he was detained had been torn from their contexts and the portions which were favourable to him were omitted. The contention was that if his writings had been fairly quoted they would have been found to be absolutely innocuous and harmless.

26. Having heard learned counsel on these points we shall now proceed to examine them one by one. Points nos. 1 and 3 are, to our minds, more or less alike and so we shall take them together. As far as those points are concerned, the Supreme Court in the case of Ashutosh Lahiry Vs. The State of Delhi and Another, , has stated the legal position in the following terms:--

"There can be no better proof of "mala fides" on the part of the executive

authorities than a use of the extra-ordinary provisions contained in the Act "(the reference was to Section 3 of the Preventive Detention Act)" for purposes for which the ordinary law is quite sufficient."

The petitioner was as we know, in detention under the ordinary law from the 16th of September 1956, and nothing had happened in the meantime to justify his further detention under the extra-ordinary provisions of the Preventive Detention Act. There would have been sufficient justification for the application of the said Act, if and when the petitioner was ordered to be released on bail for his alleged offences under the Indian Penal Code. .

The detaining authorities would then have had ample justification for passing the detention order under the Preventive Detention Act and the said order would not necessarily have been a mala fide one. The reason for that being that the considerations which weigh with the Courts when granting bail are different from the considerations which actuate the detaining authorities when they are called on to take preventive action in the interest of maintenance of public order, safety and communal harmony.

As Bindbasni Prasad, J., observed in the case of Nawabzada Mahmud Hasan Khan Vs. Rex, , "The Courts when granting bails under the provisions of the Code of Criminal Procedure and the executive authorities when ordering detention under Maintenance of Public Order (Temporary) Act, act in different spheres guided by different considerations and actuated by different objectives. The Courts are charged with the judicial determination of an offence already committed and in that connection to consider whether or not to grant bail to the accused. The detaining authorities on the other hand while acting under the above Act have before them the object of taking preventive action in the interest of maintenance of public order and safety and communal harmony. Their fields of activities are not concurrent. They are largely exclusive of each other.""

27. Learned Deputy Government Advocate drew our attention to the case of Mool Chand and Others Vs. Emperor, , in which a learned Single Judge of this Court observed as follows:--

"The mere fact that certain persons were first arrested under some provisions of the ordinary law and were later ordered to be detained under the Act "(the Act in that case being U. P. Maintenance of Public Order (Temporary) (Act IV of 1947)" is not in itself proof of mala fides and it is for those persons to adduce further circumstances and evidence to show that the executive authorities acted mala fide."

28. That case to our mind is distinguishable from the facts of the present case. In that case there was no judicial enquiry pending against any of the petitioners at any time before the detention orders were passed as in the present case, and it was principally this circumstance which led- that learned Single Judge to take the view that he did. To our mind, the case of Kamla Kant Azad Vs. Emperor, is on all fours with the facts of the present case. In that case their Lordships

observed as follows:--

"He was subsequently, tried on a charge of da-coity and was convicted, but on appeal, the conviction was set aside by the Special Judge. This was on the 20th April 1943, and long before that on 27th October 1942, an order of detention had been made against him. From what is contained in the judgment of the learned Special Judge, it would seem that a judicial enquiry was held by a Sub-Deputy Magistrate.

This was not completed until 15th November 1942, so that the order of detention was made while it was still in progress. When a man is arrested and brought up before a Court on some definite and specific charge, it seems to me very undesirable and indeed quite wrong for an order of detention to be made against him before he has been tried on the charge and his guilt or innocence finally determined."

29. The Supreme Court in the case of *Ashutosh Lahiry v. State of Delhi (M)* (ubi supra), has now endorsed the view expressed by their Lordships of the Patna High Court as far back as 1944, and having regard to the same "though it may not be possible" to quote their Lordships of the Supreme Court--"to hold that there was want of good faith on the part of the authorities, the case is not altogether free from suspicion", or to quote the learned Judges of the Patna High Court "it seems very undesirable and indeed quite wrong for an order of detention to be made against him before he has been tried on the charge and has had his innocence finally determined.

30. The reason for taking this view is, to our minds, very obvious. If the person is convicted and sentenced for alleged offences under the ordinary law the necessity for an order of detention under the Preventive Detention Act ceases to exist, at least until he has served out his sentence. Even an order of detention passed shortly before the expiry of the sentence and in anticipation of the release would not, in our opinion necessarily be wrong.

But to order detention under the Preventive Detention Act while the person is already under detention under the ordinary law awaiting his trial is, to say the least, "undesirable" even though it may not be wanting in good faith on the part of the detaining authorities. The other case cited by the learned Deputy Government Advocate viz., the case of *Nawabzada Mahmud Hasan Khan Vs. Rex*, is distinguishable on facts, as in that case the order of detention was passed after the petitioners had been let off on bail by a Court of law and it was held that:

"The Courts when granting bails under the provisions of the Code of Criminal Procedure and the executive authorities when ordering detention under Maintenance of Public Order (Temporary) Act, act in different spheres guided by different considerations and actuated by different objectives. The Courts are charged with the judicial determination of an offence already committed and in that connection to consider whether or not to grant bail to the accused.

The detaining authorities on the other hand while acting under the above Act have before them the object of taking preventive action in the interest of maintenance of public order and safety and communal harmony. Their fields of activities are not concurrent. They are largely exclusive of each other.""

31. The second ground urged by learned counsel for the petitioner in connection with his contentions on the question of mala fides has to our mind no force and must be rejected. The learned Deputy Government Advocate has given us the relevant dates to show that the detaining authorities took ample time to make up their minds before passing the detention order in question, and it cannot, therefore, be urged that the order was passed in a hurry. The petitioner was arrested under the ordinary law on the 16th of September 1956. Thirteen days later, i.e., on the 29th of September 1956, the police reported that action under the Preventive Detention Act was necessary and might be taken against the petitioner.

This report was sent to the Senior Superintendent of Police on the 1st of October 1956. On the 3rd of October 1956, the Senior Superintendent of Police forwarded it to the District Magistrate for necessary orders and the District Magistrate passed the impugned detention order on the 5th of October 1956. Having regard to these dates it is not possible to accept the contention of the learned counsel for the petitioner that the order was passed in a hurry because of the observations, referred to above, made by the learned Sessions Judge while dismissing the petitioner's bail application. No reason has been shown why it was necessary for the District Magistrate to pass the said detention order immediately.

There was apparently no hurry to pass that detention order that very day as the petitioner's bail application had been refused. There was time enough for him to have passed the said detention order if and when the petitioner's bail application looked like being granted. Under the circumstances the passing of the detention order on the 5th of October 1956, cannot be said to have been done in a hurry and we are, therefore, not prepared to accept this part of the contentions of the learned counsel for the petitioner,

32. So far as ground No. 4 is concerned there is again no force in it and has to be rejected. There is no material before us to warrant the conclusion that the detention order was passed in a fit of anger because the petitioner had been criticising the Government and Sri K. M. Munshi. That is a mere fantasy on his part and has to be rejected.

33. Similarly ground No. 5 has no force and has to be rejected. The correctness, the sufficiency and the reasonableness of the facts and particulars on which the detaining authorities based their subjective test for coming to their conclusions for passing the detention order in question are beyond the jurisdiction of this Court. They cannot even be looked into, much less be made the subject of judicial decision.

34. Learned Deputy Government Advocate had raised two other minor points, which we may mention before concluding our judgment. One of them was that the petitioner was not entitled to the assistance of the Court, as he was in gross contempt thereof. Learned Deputy Government Advocate based this contention of his on the fact that the petitioner, in spite of his attention having been drawn to that fact in para. 47 of the counter-affidavit that he had misquoted "detention" instead of "tension" in para. 21 of his affidavit, thus suggesting that the learned Sessions Judge was perhaps actuated by some improper motive in rejecting the petitioner's bail application, did not correct his mistake in para. 27 of his rejoinder affidavit but persisted in maintaining the truth thereof.

Learned Deputy Government Advocate's contention was that his omission to correct his mistake was deliberate and he was, therefore, in gross contempt and was not entitled to any relief unless and until he first purged himself of that contempt. We have considered this matter, and are of the opinion that there is nothing necessarily deliberate about this omission from the rejoinder affidavit. The affidavits in question are long rambling documents running into several pages and if an omission has taken place, it could very well be fortuitous.

The other point raised by learned Deputy Government Advocate was that he was entitled to costs, if the petition was going to be dismissed. Since we are allowing the petition and have no intention of awarding costs to the petitioner, even if we could do so, that point does not call for determination in the present proceedings.

35. For the reasons stated above we are of the opinion that this petition must be allowed and the order of detention dated the 5th, of October 1956, quashed. The petitioner shall be set at liberty forth with unless he has to remain in custody under some other order of a competent Court, or authority.