
(1993) 09 MAD CK 0041

In the Madras High Court

Case No : Habeas Corpus Petitions No's. 689 and 695 of 1993

N. Ajimeer Khan

APPELLANT

Vs

District Collector and The District Magistrate,
Ramanathapuram and another

RESPONDENT

Date of Decision : 29-09-1993

Acts Referred:

National Security Act, 1980 — Section 14A, 3

Citation : (1995) 1 ALT(Cri) 144 : (1994) CriLJ 2670

Hon'ble Judges : T.S. Arunachalam, J; Doraiswamy Raju, J

Bench : Division Bench

Advocate : Mr. B. Kumar, for the Appellant; Mr. I. Subramaniam, Additional Public Prosecutor, for the Respondent

Judgement

Raju, J.—The above petitions were dealt with together since the ground basis for action against the detenus arise out of one and the same

occurrence and the learned counsel appearing on either side made common submissions.

2. H.C.P. No. 689 of 1993 has been filed by the petitioner claiming to be the son of the detenu Naina @ Naina Mohammed, detained pursuant to

an order of detention in Cr. M.P. No. 2/NSA/93 dated 18-3-1993 pleading for his release. H.C.P. No. 695 of 1993 has been filed by the very

same petitioner claiming to be the family friend of the detenu Sahul Hameed, son of Eatu Naina @ Naina Mohammed, detained pursuant to the

orders passed in Cr. M.P. No. 3/NSA/93 dated 18-3-1993, paying for the release of the detenu.

3. The common facts that could be gathered from the above referred two orders of detention are that the respective detenus are residents of

Thiruppalaikudi in Ramanathapuram District, and that both of them owned diesel launch of their own. During the period when Liberation Tigers of

Tamil Eelam (LTTE) militants were at Karankadu, the detenus came into contact with the members of the LTTE at the said place and used to

receive explosive substances from those members to be utilised by them for fishing operations. Due to the increased beefing up of the coastal

security and surveillance over the LTTE militants, they shifted their base of operation from Karankadu. The detenus thereafter were said to have

started smuggling essential goods like diesel and petrol by clandestinely transporting them to Sri Lanka and handing them over to the LTTE

militants in the said island. The tightening of the supervision and control and strict check and surveillance by the Check Post authorities were said to

have dislocated the clandestine operations of the detenus in the lucrative venture which they were carrying on for quite sometime. Aggrieved, the

detenus together were said to have worked out a plan as a counter-blast to destroy the microwave tower, a vital installation at Saveriarpattinam in

Ramanathapuram district situated at about eight kilo metres distance from the sea coast, with the object of striking terror and panic in the minds of

the people as well as Government officials and thereby ultimately bring down the reputation of the State Government. In order to achieve such

clandestine objective, the detenus appeared to have secured from the LTTE militants sophisticated explosive substances for using the same to blow

up the microwave tower referred to above.

4. On 21-1-1993 at about 1.30 a.m. G. Muthuvel, Inspector of Police, Thondi Coastal Circle, was stated to have received secret information that

the detenus Naina @ Naina Mohammed and Sahul Hameed were proceeding towards the microwave tower at Saveriarpattinam to blow up the

microwave tower by using improvised explosive substance carried by them. The said Inspector of Police, along with a police party accompanied

by Habeeb, son of Khan Mohamed, the Village Administrative Officer and Rajendran, Thalayeri (the village menial) immediately proceeded

towards Saveriarpattinam where the microwave tower is situated. They were said to have reached the place at about 2.30 a.m. and they found

both the detenus making preparations to blow up the microwave tower with gelatine sticks. Shocked over what they saw, the police personnel

immediately pounced upon both the detenus and apprehended them. Each one of the detenus was said to have been found in possession of five gelatine sticks wrapped in polythene paper, five detonators, fuse wire, match box and rope made up of jute. The above properties were seized under the cover of a mahazar at about 3.30 a.m. on 21-1-1993, in the presence of independent witnesses. The detenus voluntarily gave separate confessional statements in the presence of independent witnesses disclosing details about their plans and the object as well as reasons for embarking upon such a move. It is stated that, but for the timely intervention by the police, the microwave tower would have been blown beyond recognition.

5. The Inspector of Police arrested both the detenus on the spot and brought them to R. S. Mangalam Police Station and registered a case in

Crime No. 12 of 1993 for an offence under S. 5 of the Indian Explosives Substances Act and the case is said to be under investigation. During

the course of interrogation, the detenus in their voluntary confessional statements, as referred to already, admitted not only their association with the

LTTE militants but also their activities like engaging in smuggling of essential articles like diesel and petrol, besides attempting to blow up the

microwave tower at Saveriyarpattinam, in an endeavour to create panic and terror in the minds of the people including Government officials and

thereby bring down the reputation of the Government. The gelatine sticks, detonators and fuse wires were sent for analysis and examination. The

detenus had no licence or permit to possess the gelatine sticks etc. The Inspector of Police, who seized the materials, addressed the Judicial

Magistrate, Thiruvadanai on 21-1-1993 itself for sending a requisition to the Deputy Controller of Explosives, Sivakasi for chemical examination of

the explosives seized and the Judicial Magistrate in his turn has addressed the Deputy Controller of Explosives on 22-1-1993 for the said purpose.

The Superintendent of police, Ramanathapuram also appears to have requested the Deputy Controller of Explosives on 22-1-1993 to examine the

explosives by giving top priority. The Inspector of Police also pursued the matter further by calling upon the Deputy Controller of Explosives on

25-1-1993 and 15-2-1993 to expeditiously obtain the report and after all these actions taken, the report dated 23-2-1993 was received by the

Inspector of Police in person. The Deputy Controller of Explosives, Sivakasi, in his report dated 23-2-1993 has opined that the materials

forwarded for examination are explosive substances and that, to possess or carry such explosive substances, a licence is obligatory under the relevant rules.

6. The microwave tower in question is said to be a very vital and sensitive installation and is of great importance in telecommunication and that any

damage or destruction to such a vital installation will affect the public order besides causing panic and a feeling of insecurity in the minds of the

general public as well. The clandestine move and attempt made to blow up the said microwave tower are, in the opinion of the detaining

authorities, activities which are prejudicial to the maintenance of the public order and that the confessional statement of the detenus showed that

they were aware of the serious and dangerous consequences of their clandestine activities. Though the applications filed by the detenus before the

Criminal Courts for bail came to be rejected, the detaining authority felt that in matters of the nature under consideration bail is normally granted

after a lapse of small interval of time and that there was an imminent possibility of the detenus coming out on bail. In the light of the nature of the

dangerous and illegal activities of the detenus, the detaining authority came to the conclusion that such dangerous and illegal activities cannot be

curtailed by taking re-course to the normal law and that, therefore, the detention of the detenus under the provisions of the National Security Act,

1980 is essential to prevent them from in any manner acting prejudicial to the maintenance of the public order and to the maintenance of supplies

and services essential to the community in future. The State Government has also accorded its approval to the order passed by the first respondent

and subsequently confirmed the same on the basis of the opinion tendered by the Advisory Board.

7. Mr. B. Kumar, learned counsel for the petitioners, submitted (a) that there has been no proper communication of the grounds and pages 7, 15,

33 and 37 of the relevant papers in the paper book supplied are all illegible; (b) that there was no proper translation of the grounds of detention in

Tamil, the only language known to the detenus in that crucial words which constituted the substance of the allegation were said to have been

omitted to be translated; (c) that the failure to dispose of the representations within twelve days vitiates the order; and (d) that the mere attempt to

blow up the microwave tower which act did not ultimately fructify could not provide the sufficient basis for the order of detention passed against

the petitioners, as according to the learned counsel, the mere attempt could not constitute an act prejudicial to the maintenance of public order.

8. Mr. I. Subramaniam, learned Additional Public Prosecutor, contended per contra, while adverting to the detailed averments in the counter

affidavits filed in the above petitions, that the pages concerned cannot be considered to be unintelligible, that the translation was done effectively

and properly and as a matter of fact, the Jail Authorities have not only read over the substance of all documents to the detenus, but no such

variation was complained of initially. As for the final submissions of the learned counsel for the petitioners, that the act complained of did not really

constitute an act prejudicial to the maintenance of Public Order it was contended that the same constitutes sufficient basis and, that no interference

is, therefore, called for with the orders under challenge. It was also contended for the respondents that though the orders passed by the first

respondent could not last longer than 12 days unless in the meantime it has been approved by the Government, it is not incumbent on the first

respondent or the Government to dispose of the representations filed, within the said period of twelve days.

9. We have carefully considered the submissions of the learned counsel appearing on either side. We are of the view that the claim and grievance

regarding the alleged illegibility of the pages referred to and the so called lapse in the translation of the order of detention in Tamil is wholly

unsustainable. We have ourselves gone through the pages concerned and the contents are not only decipherable but not illegible as claimed and the

grievance appears to be hypertechnical and bereft of substance. The lapse in transaction alleged is also not well merited. The Tamil translation and

its correctness has to be tested with reference to the sum and substance and not having in mind literal word by word translation or transliteration.

Such an attempt will destroy the very object of translation and render a fair reading and understanding of the contents wholly impossible. In cases

of translation, there is bound to be some difference due to the varying purport and contents of the vernacular words concerned. In these case, we

do not find any such material variation or substantial change so as to affect the real meaning or purport of the order. So long as the spirit and

substance of the matter has not been lost or defeated by such translation, no legitimate grievance thereof can be made. Consequently, we do not

see anything wrong in the Tamil translated version of the order or the grounds of detention.

10. The plea based upon the alleged failure to dispose of the representations by the State Government expeditiously has also to fail on the facts of

these cases. So far as H.C.P. No. 689 of 1993 is concerned, the representation dated 19-3-1993 sent by Ahmed Khan, another son of the

detenu was received by the District Collector on 26-3-1993, that parawar remarks were called for from the sponsoring authority on the same day,

that the remarks were received on 2-4-1993 and sent on the same day to the Government. In between 27-3-1993 and 28-3-1993 happen to be

holidays. As for the representations sent by the petitioner in an undated petition, the same was received by the District Collector on 9-4-1993 and

the parawar remarks were sent on 10-4-1993 itself. On the undated representations, the remarks were called for the received by the Government

on 12-4-1993 from the District Collector. 9-4-1993, 10-4-1993 and 11-4-1993 were also public holidays. Between 13-4-1993 and 17-4-1993

the various authorities of the Government dealt with the same without any lapse or default expeditiously day to day disclosed in the counter affidavit

of the second respondent and orders rejecting the same were passed on 17-4-1993 and communicated also to the detenus. So far as the petition

sent by Ahmed Khan is concerned, the remarks sent by the District Collector was received by the Government on 4-4-1993 and 5-4-1993 was a

holiday. On 6-4-1993 a copy of the representation was called for from the District Collector since the same was not received by the Government

as such. The same was received on 7-4-1993 and after expeditious consideration by the various officers of the State Government, the same was

rejected on 13-4-1993. There was absolutely no lapse on the part of the Government in this regard as could be seen from the details furnished in

the counter affidavit of the second respondent State Government.

11. So far as H.C.P. 695 of 1993 is concerned, the representation dated - nil - sent on behalf of the detenu was received by the District Collector

on 9-4-1993 and the parawar remarks were sent to the Government on 10-4-1993 itself. The parawar remarks were received by the Government on 12-4-1993. In between 9-4-1993, 10-4-1993 and 11-4-1993 happen to be holidays. On 13-4-1993 a note was submitted to the Deputy Secretary, Public, in circulation and he approved the same on the same day. The Joint Secretary, Public, approved it on 14-4-1993 and the Secretary on 15-4-1993. The Secretary, Law Department, approved the file on 16-4-1993 and the Law Minister on 17-4-1993. The representation was rejected on 17-4-1993 and was also communicated to the detenus. There is no statutory duty or obligation on the part of the first respondent to consider and dispose of the representation within a period of twelve days specified in S. 3(4). So far as the case on hand is concerned, the petitioners' case has been represented before the Detaining Authority as well as the Government and the Detaining Authority forwarded the remarks to the Government. The Government has considered the claims made in the representations and not only rejected the claims but approved the detention and sent a report as obliged upon them to the Government of India. The factual details furnished in the counter affidavits filed by the respondents would belie the grievance of the petitioners in this regard.

12. The learned counsel for the petitioners further contended that the satisfaction of the Detaining Authority must be with reference to preventing a person from acting in a manner prejudicial to maintenance of public order and that unless it was satisfied that the activity of the detenu created problem of public order, it could not be prognosed that he is likely to act in a manner contrary to public order. According to the learned counsel for the petitioners, the activity attributed to them had not resulted in any problem of public order or affected public order since it was neither done publicly in the public place or was intended to affect a section of the society by disturbing their normal life and at any rate what was attempted to have been or prepared to have been done at 1.30 a.m. could never amount to a problem prejudicial to maintenance of public order. In substance, the submission of the learned counsel for the petitioners is that unless the questionable act was carried out into effect with resultant consequences suffered or felt by the section of the society and that too at a point of time when the members of public were present at a public place, there is no

question of any prejudice to maintenance of public order arising or existing, providing thereby the required basis for passing an order of detention

against the petitioners. It is also the submission of the learned counsel that unless the legislative enactment contained any special or expanded

definition, the provisions of S. 3 of the National Security Act alone could not be construed so as to rope in acts complained of against the

petitioners as constituting sufficient basis for detaining them under the Act. Reliance has been placed upon the decisions in *The State of West*

Bengal Vs. Ashok Dey and Others, ; *A.K. Roy and Others Vs. Union of India (UOI) and Others*, ; *Dipak Bose alias Naripada Vs. State of West*

Bengal, ; *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, and *Magan Gope Vs. The State of West Bengal*, .

13. Per contra, the learned Additional Public Prosecutor contended that the orders of detention were passed in these cases judged by the gravity

of the act attempted to be committed, which if committed without timely interception, would have resulted in serious disturbance of public order

and that the provisions of the National Security Act, 1980 enable the detaining authority to pass orders of preventive detention by way of the

anticipatory and precautionary action on being subjectively satisfied that the detenu will indulge in terrorist activities, if allowed to be at large or

released from jail on bail. The learned counsel for the respondent further submitted that acceptance of the stand taken for the petitioners would

have the effect of defeating the very object and aim of the National Security and would lead to several incongruities unintended by the law made

with a view of counteract a menace to public order. Reliance was placed in support thereof to the decisions in *The State of Bombay Vs. Atma*

Ram Sridhar Vaidya, ; *Naresh Chandra Ganguli Vs. The State of West Bengal and Others*, ; *Giani Bakshish Singh Vs. Government of India and*

Others, ; *Haradhan Saha Vs. The State of West Bengal and Others*, ; *Ashok Kumar Vs. Delhi Administration and Others*, ; *Fazal Ghosi and*

Others Vs. State of U.P. and Others, and *State of Punjab Vs. Sukhpal Singh*, . The decisions referred to by the learned counsel for the petitioners

were more to impress upon us the position that narrow construction alone has to be placed upon the enabling powers of the authorities and that in

the absence of special definition in the law itself as were considered in those decisions, there is no justification to give a wide interpretation to the

words "public order". The decisions referred to by the learned Public Prosecutor were also for the contrary stand regarding the construction of the concept of "public order".

14. We consider it wholly unnecessary to deal with the above decisions individually for the reason that a reference to the later decision of the

Supreme Court of India wherein the Apex Court reiterated and restated the law on the subject would sufficiently serve our purpose. In the

decision reported in Ashok Kumar Vs. Delhi Administration and Others, , it was held as follows (at page 1195 of Cri LJ) :-

13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and

extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not

mean that there can be no overlapping Acts similar in nature but committed in different contexts and circumstances might cause different reactions.

In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order.

The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community

which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case.

14. Those who are responsible for the national security or for the maintenance of public order must be the sole Judges of what the national security

or public order requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done

something but to intercept before he does it and to prevent him from doing it justification for such detention is suspicion or reasonable probability

and not criminal conviction which can only be warranted by legal evidence. It follows that any preventive measures, even if they involve some

restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent

mischievous to the State. It is a matter of grave concern that in urbanised areas like cities and towns and particularly in the metropolitan city of Delhi

the law and order situation is worsening every day and the use of knives and fire-arms has given rise to a new violence. There is a constant struggle

to control the criminal activities of the persons engaged in such organised crimes for the maintenance of public order. It is difficult to appreciate the

argument that the detention here is with a view to punish the detenu for a series of crimes that he is alleged to have committed, but which the law

enforcement agency is not able to substantiate. There is no reason why the executive cannot take recourse to its power of preventive detention in

those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person

who has overawed witnesses or against whom no one is prepared to depose"".

15. In State of Punjab Vs. Sukhpal Singh, , it was held as hereunder :-

(8) The learned Attorney General of India for the appellant assailing the findings of the High Court submits that the High Court's finding that there

was no subjective satisfaction of the detaining authority simply because no criminal case was registered against the detenu for his public speeches is

erroneous both in law and facts. The allegations were that during the period from November 19, 1987 to May 11, 1988 the detenu made 9

provocative speeches as stated in the grounds of detention inciting communal hatred and violence between Hindus and Sikhs, inciting Sikhs to

armed violence against the Government established by law both in the State and in the Centre and making the offer of monetary and other

assistance to the terrorists. When the detention order was passed, the detenu was already detained in Burail Jail and the detention order itself said

that he was already in custody and was taking steps to get himself released and there was every likelihood of his being released from custody; and

that in the event of his release he was likely to resume such prejudicial activities in future and there was thus compelling necessity to pass the order.

He submits that the subjective satisfaction of the detaining authority was based on pertinent materials and it had in mind the question whether the

prosecution of the detenu would be possible and sufficient. Mr. Kapil Sibal, learned counsel for the respondents supporting the findings of the High

Court reiterates that the fact that no criminal case was registered during the period of giving the alleged speeches clearly showed that there was

non-application of mind preceding the detention order. We find force in the submission of the learned Attorney General. The detention order itself

said that the detenu was already in custody and was likely to be released

wherefore it was necessary to order for his preventive detention. It is not denied that the above materials were placed before the detaining authority. The Act nowhere provides that the detention authority cannot resort to preventive detention without first criminally prosecuting the detenu. A clear distinction has to be drawn between preventive detention in which anticipatory and precautionary action is taken to prevent the recurrence of apprehended events, and punitive detention under which the action is taken after the event has already happened. It is true that the ordinary criminal process of trial is not to be circumvented and short-circuited by apparently handy and easier resort to preventive detention. But the possibility of launching a criminal prosecution cannot be said to be an absolute bar to an order of preventive detention. Nor would it be correct to say that if such possibility is not present in the mind of detaining authority, the order of detention would necessarily be bad. The failure of the detaining authority to consider the desirability of launching a criminal prosecution before ordering preventive detention may in the circumstances of a case lead to the conclusion that the detaining authority had not applied its mind to the important question as to whether it was necessary to make an order of preventive detention but such is not the case here. In this regard one has to bear in mind the relevant facts and circumstances of a case including the time and place concerned. In this view we find support from the decision in *Fazal Ghosi and Others Vs. State of U.P. and Others*, wherein it was pointed out that the Act provided for preventive detention which was intended where it was apprehended that the person might act prejudicially to one or more considerations specified in the statute, and that preventive detention was not intended as a punitive measure for curtailment of liberty by way of punishment for the offence already committed. Section 3 read with S. 14A of the Act clearly indicated that the power of detention thereunder could be exercised only with a view to preventing a person from acting in a manner which might prejudice any of the situations set forth in the section. To apply what was said in *Rex v. Halliday*, Ex parte *Zadig*, 1917 AC 260, one of the most obvious means of taking precautions against dangers such as are enumerated is to impose some restriction on the freedom of movement of persons whom there may be any reason to suspect of being disposed to commit what is enumerated in

S. 3 of the Act. No crime is charged. The question is whether a particular person is disposed to commit the prejudicial acts. The duty of deciding

this question is thrown upon the State. The justification is suspicion or reasonable probability and not criminal charge which can only be warranted

by legal evidence. It is true that in a case in which the liberty of such person is concerned we cannot go beyond natural construction of the statute.

It is the duty of this Court to see that a law depriving the person of his liberty without the safeguards available even to a person charged with crime

is strictly complied with. We have, however, to remember that individual liberty to allowed to be curtailed by an anticipatory action only in interest

of what is enumerated in the statute.

(9) In actual practice the grounds supplied operate as an objective test for determining the question whether a nexus reasonably exists between

grounds of detention and the detention order or whether some infirmities had crept in. A conjoined reading of the detention order and the grounds

of detention is therefore necessary. It is as was held in *Ujagar Singh Vs. The State of The Punjab*, , largely from prior events showing tendencies or

inclinations of a man that inference can be drawn whether he is likely in future to act in a prejudicial manner. But such conduct should be

reasonably proximate and should have a rational connection with the conclusion that the detention of person is necessary. The question of relation

of the activities to the detention order must be carefully considered. Though the possibility of prosecution being launched is not an irrelevant

consideration, failure to consider such possibility would not vitiate the detention order. In *Haradhan Saha Vs. The State of West Bengal* and

Others, , the Court did not lay down that possibility of a prosecution being launched was an irrelevant consideration, not to be borne in mind by

detaining authority but it laid down that the mere circumstance that a detenu was liable to be prosecuted would not by itself be a bar to the making

of an order of preventive detention. It did not follow therefore that failure to consider the possibility of criminal prosecution being launched could

ever lead to the conclusion that a detaining authority never applied its mind and the order of detention was therefore bad. Is it correct to say that if

such possibility was not present in the mind of the detaining authority, the order of the detention is necessarily bad ? Unless it clearly appears that

preventive detention is being resorted to as the line of least resistance where criminal prosecution would be the usual course, no fault can be found

with it. What is to be seen is whether the detaining authority has applied its mind or not to the question whether it was necessary to make

preventive detention. In the instant case there is evidence of application of mind. The proximity between the date of commission of an offence and

of detention order cannot also be said to be absent in this case. As we have already seen the power of preventive detention is qualitatively different

from punitive detention. The power of preventive detention is precautionary power exercised reasonably in anticipation and may or may not relate

to an offence. It cannot be considered to be a parallel proceeding. The anticipated behaviour of a person based on his past conduct in the light of

surrounding circumstances may provide sufficient ground for detention. It cannot be said that the satisfaction of the detaining authority on the basis

of his past activities that if the detenu were to be left at large he would indulge in similar activities in future and thus act in a manner prejudicial to the

maintenance of public order etc. shall not be based on adequate materials. Public safety ordinarily means security of the public or their freedom

from danger. Public order also implied public peace and tranquillity. There is no escape from the conclusion, that the terrorist and disruptive

activities disrupt public peace and tranquillity and affect the freedom of the public from danger to life and property. Disruption means the act of

bursting and tearing as under. Disruptive means producing or resulting from or attending disruption. Terrorism means the act of terrorising; unlawful

acts of violence committed in an organised attempt to overthrow a Government or like purposes. Terrorist means one who adopts or supports the

policy to terrorism. The terrorist and disruptive activities are naturally disruptive of public peace, tranquillity and development.

16. In Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another, , Dr. Justice A. S. Anand speaking for the Division

Bench, in a case of preventive detention arising out of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug

Offenders Act, 1981, analysed the position meticulously and declared the position as hereunder :-

17. It is not necessary to multiply the authorities on this point.

18. From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of "law and order" or has acted in a manner likely to cause disturbance to "public order". It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of "public order". Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to "public order" or belong to the category of being prejudicial only to "law and order". An order of detention under the Act would be valid if the activities of a detenu affect "public order" but would not be so where the same affect only the maintenance of "law and order". Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention.

19. Dr. Chitale did not dispute that if the activities of the detenu have the potential disturbing the even tempo of the society or community, those activities would be prejudicial to maintenance of "public order", he whoever, relied upon certain judgments to urge that ""bootlegging"" activity of the detenu in the instant case, could not affect public tranquillity and did not have any potential of affecting public order to justify his detention.

23. Dr. Chitale then placed reliance on State of U.P. Vs. Hari Shankar Tewari, , Ahmedhussain Shaikhhussain @ Ahmed Kalio Vs. Commissioner of Police, Ahmedabad and Another, , Mrs. T. Devaki Vs. Government of Tamil Nadu and others, and Ashok Kumar Vs. Delhi Administration and Others, , but none of these judgments lay down test different than the one which we have culled out from the judgments of this Court referred to earlier. Those cases were decided on their peculiar facts. The courts were very much alive to the conceptual difference between activities prejudicial to law and order and those prejudicial to public order and since on facts it was found that the activities of the detenu were not prejudicial to "public order", the orders of detention were quashed.

24. Crime is a revolt against the whole society and an attack on the civilisation of the day. Order is the basic need of any organised civilised society and any attempt to disturb that order affects the society and the community. The

distinction between breach of "law and order" and disturbance of "public order" is one of degree and the extent of reach of the activity in question upon the society. In their essential quality, the activities which affect "law and order" and those which disturb "public order" may not be different but in their potentiality and effect upon even tempo of the society and public tranquillity there is a vast difference. In each case, therefore, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of "public order" or only "law and order".

25. There is no gainsaying that in the present state of law, a criminal can be punished only when the prosecution is able to lead evidence and prove the case against an accused person beyond a reasonable doubt. Where the prosecution is unable to lead evidence to prove its case, the case fails, though that failure does not imply that no crime had been committed. Where the prosecution case fails, because witnesses are reluctant on account of fear of retaliation to come forward to dispose against an accused, obviously, the crime would go unpunished and the criminal would be encouraged. In the ultimate analysis, it is the society which suffers. Respect for law has to be maintained in the interest of the society and discouragement of a criminal is one of the ways to maintain it. The objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the Society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of "public order" and are merely prejudicial to the maintenance of "law and order".

17. The learned counsel for the petitioners, while referring to the decision reported in *The State of West Bengal Vs. Ashok Dey and Others*, has pointed out that Section 3 of the West Bengal (Prevention of Violent Activities) Act, Presidents Act 19 of 1970, is more specific in listing out the nature of activities considered to be amounting to violation of Public Order, unlike the provisions of the National Security Act, 1980 and in the absence of such specification only a restricted construction is called for. The court, in that case, has held that the acts covered by the prohibited category are reasonably likely to be prejudicial to the maintenance of public

order and that disturbance of public order in a State may in turn prejudicially affect its security is indisputable. In the decision reported in *Dipak Bose alias Naripada Vs. State of West Bengal*, , the court held that the acts attributed to the detenu viz., of having on two occasions, accompanied by certain associates and armed with certain weapons including bombs committed murders of two specified individuals in a public road cannot be held to have jeopardised public order. The reason which weighed with the court to come to such a conclusion apart from the fact that the acts complained of were against specific individuals on two different occasions, the bombs carried were not used in perpetuating the crime. The court also noticed in the said decision certain earlier decisions and expressed the view that acts similar in nature but committed in different circumstances might cause different reactions, in one case, affecting specific individuals only and in others affecting public order.

18. In the decision in *Joydeb Gorai Vs. State of West Bengal*, , it was held that a threat by the detenu to kill a person if he refuses to rub out anti-naxalite slogans written on his wall coupled with the claim that such threat terrorised the common public and, therefore, they could not pursue the normal avocation of life had the impact of disturbing public order. In *Nishi Kanta Mondal Vs. State of West Bengal*, , it was held as hereunder at page 908 of Cri LJ :-

The recovery of the high explosive bombs from the possession of the petitioner prevented him from using and exploding the bombs and disturbing the public order. As the object of the detention is to prevent the detenu from acting in any manner prejudicial to the security of the State or the maintenance of public order, the grounds of detention supplied to the petitioner, in our opinion, should be held to be germane to the purpose for which detention order can legally be made under the Act. In order to detain a person with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order, as contemplated by S. 3(2)(d) of the Act, it is sufficient that the detaining authority considers it necessary to detain him in order to prevent him from doing any of the actions mentioned in clause (d). If the past conduct and antecedents of the person concerned reveal a tendency to do the acts referred to in clause (d), the order of detention would be upheld, even

through because of some supervening cause like prompt action by the police, the public order is not actually disturbed.

19. In the decision reported in *Giani Bakshish Singh Vs. Government of India and Others*, , Justice A. Alagiriswami who spoke for the Bench

observed as follows at page 1806 of Cri LJ :-

Defence of a country or the security of a country is not a static concept. The days are gone by when one had to worry about the security of a

country or its defence only during war time. A country has to be in a perpetual state of preparedness. Eternal vigilance is the price of liberty.

20. The principles that emanate from the precedents referred to above can be broadly stated to be that Public Order is what the French call *ordre*

publique which is something more than ordinary maintenance of law and order and what is really decisive is the degree and extent of the reach of

the objectionable activity upon the society and the potentiality of the act to disturb the even tempo of the life of the community. The fact that the act

complained of was in a lonely place would not make it any the less one affecting public order if such an act really has a tendency to disturb the

even tempo of living. (See *Arun Ghosh Vs. State of West Bengal*, . Similarly threats administered which have a tendency to terrorise the common

public and dissuade them from pursuing normal avocation of life is equally prejudicial to the maintenance of public order. A smart surveillance

coupled with swift counter operations by the law enforcing authorities supervening and overwhelming the actual commission of the dastardly act

would not, at any rate detract from the position that the abortive act smacks of a serious threat to public order. What really matters is the

potentiality of the act to disturb the even tempo of the life of the community by creating a fear psychosis and a sense of insecurity among the

members of public as also the law enforcing agencies, which really and ultimately makes it prejudicial to the maintenance of public order.

21. Consequently, the nature of the objectional activities of a detenu have to be judged on the totality of the circumstances in a given case to find

out the extent of their prejudicial effect on the society as a whole. Even a solitary act depending upon the degree or extent of the reach, effect and

its potentiality to disturb public tranquillity by creating terror and panic among the members of the society would suffice for the detaining authority

to arrive at the subjective satisfaction as to the detenu having acted in a manner likely to cause disturbance to public order. In the light of the above

criteria or principles governing the issue, it becomes relevant and necessary to consider as to whether the materials available against the detenus are

sufficient in law to justify their detention on the ground of those constituting activities prejudicial to the maintenance of public order.

22. So far as the facts of the case and the activities complained of against the detenus are concerned, there could be no room for any doubt as to

such activities posing a serious threat to the maintenance of public order. The confessional statements dated 21-1-1993 recorded from the detenus

disclose their admitted relationship with Sri Lankan Liberation Tigers, the acquisition of knowledge of the use of gelatine sticks and detonators,

their past conduct and habit of smuggling of diesel and other essential articles to Ceylon and sale to the Liberation Tigers, purchase of explosives

from them for their use in fishing activities, the pendency of a case against each of them relating to their handling of explosives in a village dispute,

the tightening of patrol and coastal movements and the serious set back they suffered in their otherwise lucrative smuggling business, the scheme

devised by them to blow up the Microwave tower to strike terror in the people in and around and the law enforcing authorities so that they will not

interfere with their smuggling activities and their getting advice and instructions from Liberation Tigers and the learning of the use of gelatine sticks

and detonators and the purpose and aim with which they gathered themselves at the place on the eastern side of the Microwave tower at

Saveriarpattinam where they were apprehended. The mahazars of the seizure of explosives and ammunitions from the detenus and the further

admission in the confessional statement that they were alive to the position, in that their activities would bring disrepute to the Government apart

from upsetting the tempo of public life in the locality are more than sufficient to substantiate the position that the activities of the detenus involve a

serious threat to maintenance of public order. Being a preventive action under a law enacted with the sole purpose of preventive detention in the

laudable interests of protecting the security of the country, the subjective satisfaction arrived at by the detaining authority and on the facts and in the

circumstances of the case which was not only affirmed by the State Government but also approved by the Advisory Board, in our view, does not

suffer from any serious infirmity or patent error of law warranting our interference. The materials relied upon for arriving at the subjective satisfaction and consequently for passing the orders of detention cannot be said to be either irrelevant or extraneous but on the other hand are really relevant, genuine and have reasonable nexus to the maintenance of public order. The admitted materials disclose the disposition of the detenus to commit such action with the object of creating terror and thereby disrupt the normal way of peaceful life of the members of the public, undermining seriously maintenance of public order. The fact that the act complained of against the detenus is an abortive attempt on their part to blow up the Microwave tower due to the timely intervention of police is no defusing or consoling factor in favour of the petitioners. Preventive detention laws being meant to confer power to take precautionary measures in reasonable anticipation of the commission of acts prejudicial to the maintenance of public order, in our view, have been rightly resorted to in these cases. The facts admitted in the respective confessional statements of the detenus, at the time they were apprehended provide sufficient strength and basis for the detention orders, under challenge.

23. For all the reasons stated supra, we see no merit in the above Habeas Corpus Petitions. Consequently the Habeas Corpus Petitions fail and shall stand dismissed.

24. Petitions dismissed.