
(1999) 07 AHC CK 0006

In the Allahabad High Court

Case No : Habeas Corpus W.P. No. 26889 of 1999

Prem Chand Sharma, Advocate

APPELLANT

Vs

Superintendent, District Jail and Others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
National Security Act, 1980 — Section 10, 11, 3(2), 3(5), 5
Penal Code, 1860 (IPC) — Section 147, 342, 353, 504, 506
Prevention of Damage to Public Property Act, 1984 — Section 3(2)

Citation : (1999) 2 ACR 1675

Hon'ble Judges : R.R.K. Trivedi, J; M.C. Jain, J

Bench : Division Bench

**Advocate : D.S. Mishra and Rajendra Kumar Pandey, for the Appellant;
Mahendra Pratap and A.G.A., for the Respondent**

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—Petitioner Prem Chandra Sharma, an advocate practising at Dehradun, has filed this habeas corpus petition challenging the order dated 24.6.1999, passed by Respondent No. 2, District Magistrate, Dehradun, u/s 3(2) of National Security Act, 1980 (hereinafter referred to as the Act), directing his detention under the Act.

2. Along with the order of detention, Petitioner was also served the grounds of detention on the basis of which the detaining authority formed his subjective satisfaction for putting the Petitioner under preventive detention. From perusal of the grounds, it appears that on 23.6.1999, at about 2.05 p.m., when the Collector, Dehradun, was holding monthly meeting of the officers of the district, a crowd of 50-60 advocates led by Petitioner came before the meeting hall and broke open the iron bars and entered inside the meeting hall. Persuasion of the Collectorate employees, police and P.A.C. employees that the Collector is holding an important meeting could not be of any effect. Prem Chandra Sharma and his companions raised filthy and insulting slogans against the Collector. They also

threatened the Collector that his face shall be blackened and also threatened him for life. They pushed their way inside the meeting hall by pushing away the employees and forcibly made entrance in the office of the District Magistrate in order to get their demands accepted by force. Petitioner had broken the telephone and glasses of windows and doors. He also destroyed the chairs and broke the glass affixed on the table and this way caused loss of the property of thousand's of rupees. Other advocates gave full support to Prem Chandra Sharma in this violent activity. This incident was witnessed by other persons, namely, Surya Mohan Nautiyal, Tahsildar, Tahsil Dehradun, Nikhil Chandra Shukla, Additional Collector (Finance), Shri Ravindra Godbole, Dy. Collector (Sadar) and other officers and employees present there. Surya Mohan Nautiyal lodged first information report regarding the aforesaid occurrence on the same day, at 3.45 p.m., at Police Station Kotwali, Dehradun which was registered as Case Crime No. 421 of 1999, u/s 147/342/353/504/506, I.P.C. read with Section 3(2)(e) of Prevention of Damage (Public Property) Act, 1984, and Section 7 of Criminal Law Amendment Act. The case is under investigation.

3. In ground Nos. 2 to 6, it has been further stated that on account of this daring criminal activity committed in day light inside the Collectorate premises, Dehradun, the officers who were attending the monthly meeting, were taken under a grip of fear and commotion and the officers and employees present there ran helter-skelter for their safety. It is further stated that on account of this daring criminal activity, the public in general present there also fell in the grip of fear and terror which affected the public order adversely.

4. It is further stated that on account of the aforesaid incident, fear and commotion prevailed in the locality and the market adjoining to the Collectorate was closed ; people ran away leaving their vehicles : small shop-keepers also ran away leaving their shops open ; people in general and family members living in the vicinity also fell in grip of great fear and terror ; people ran away from the place of occurrence ; Government employees also left for their security leaving their offices open. This activity of the Petitioner was highly prejudicial to the maintenance of the public order.

5. In ground No. 7, it is stated that on knowing about the aforesaid incident, the officer-in-charge. Police Station Kotwali, Dehradun, along with other police personnel, reached the site of occurrence and found that there was absolute silence on roads upto long distance ; people were under fear and were not coming out of their houses ; shop-keepers had closed their shops and ran away. Even on persuasion of the officer-in-charge that full security shall be provided to them, they could not muster courage to open their shops. Residents of the area and the employees felt highly annoyed, a strong contingent of police and P.A.C. was posted there to maintain public order. All this has been mentioned in detail in General Diary No. 32, dated 23.6.1999.

6. In ground No. 8, it has been mentioned that on 23.6.1999 itself, at about 7.00 p.m., Sub-Inspector Kripal Singh of Police Station Kotwali, district Dehradun, got

a report recorded that Petitioner has further threatened to put the Government vehicle provided to the Collector on fire and to destroy the Collectorate building. An announcement to this effect was made openly amongst his companions. This activity was highly prejudicial to the maintenance of the public order. The detaining authority thereafter has stated that on the basis of the aforesaid, he felt satisfied that with a view to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing that Petitioner Prem Chandra Sharma be detained under the Act.

7. Petitioner was also informed that he has a right to make a representation against the order of detention before the State Government and such representation may be made to the Home Secretary of the State of Uttar Pradesh through the Superintendent, District Jail, Dehradun. Petitioner was further informed that he is also entitled to make a representation before the Advisory Board u/s 10 of the Act as the case of the Petitioner shall be referred within three weeks to the Advisory Board, and if representation is submitted late, it shall not be considered. Petitioner was further informed that he may be heard personally by the Advisory Board u/s 11(1) of the Act and if he is desirous of personal hearing, it should be specifically mentioned in the representation which may be submitted through the Superintendent of Jail. Petitioner was also informed that he may make a representation to the Central Government against his detention which shall be addressed to the Secretary, Government of India, Ministry of Home (Internal Security), North Block, New Delhi. It may also be submitted through the Superintendent of District Jail.

8. The detaining authority, same day, forwarded the order of detention along with other material to the State Government and the State Government approved it on 30.6.1999, u/s 3(4) of the Act. The approval was communicated to the Petitioner by letter dated 2.7.1999. Same day papers which were received from the detaining authority were forwarded to the Central Government, u/s 3(5) of the Act which were received by the Central Government on 4.7.1999.

9. Petitioner filed a representation on 28.6.1999 which was forwarded by the District Magistrate with his comments on 3.7.1999. which was received by the State Government on 4.7.1999. The representation was considered by the Under Secretary and Joint Secretary (Home) on 5.7.1999 and by Special Secretary and Secretary Home on 6.7.1999. The representation was finally rejected by the State Government on 7.7.1999 which was communicated to the Petitioner on 8.7.1999. The case of the Petitioner was referred to the Advisory Board on 2.7.1999 and the representation of Petitioner was also sent to the Advisory Board on 5.7.1999. The representation of the Petitioner was sent to the Central Government on 5.7.1999.

10. In this case, counter-affidavit and supplementary counter-affidavits have been filed by Shri Tej Pal Singh, detaining authority, District Magistrate, Dehradun, as Respondent No. 2, Shri R.S. Agarwal, Joint Secretary, Home Department, State of Uttar Pradesh has filed counter-affidavit on behalf of

Respondent No. 3 and Shri D. Ram, Superintendent, District Jail, Dehradun, has filed counter-affidavit as Respondent No. 1. No counter-affidavit has been filed by the Union of India, Respondent No. 4, though sufficient opportunity was given for the same.

11. We have heard Shri Daya Shankar Mishra, Learned Counsel for Petitioner, Shri Mahendra Pratap, learned A.G.A for Respondent Nos. 1 to 3 and Shri K.N. Pandey for Respondent No. 4.

12. Learned Counsel for the Petitioner has submitted that counter-affidavit filed by the detaining authority is defective and it cannot be read in evidence. The submission is that the consequence is that the averments made in the writ petition remained uncontroverted and they may be accepted and Petitioner is entitled to the relief on this ground alone.

13. Learned A.G.A., on the other hand, submitted that the affidavit filed is quite in order and does not suffer from any illegality. It has also been submitted that in order to avoid any complication, Anr. counter-affidavit of the detaining authority with same contents and duly sworn in by the deponent and verified by Oath Commissioner at Mussorie had been filed. The contention raised on behalf of the Petitioner cannot be accepted. Learned Counsel for the Petitioner has placed reliance on the case of Aslam Khan v. Superintendent, District Jail, Moradabad XX (1983) ACC 202(DB). In this connection, Learned Counsel for Petitioner has pointed out that the affidavit filed by Shri Tej Singh was sworn on 12.7.1999, at 4.35 p.m. whereas from the seal put by the Oath Commissioner, it appears that it was signed, sworn and verified before him by the detaining authority on 14.7.1999.

14. We have considered the defect pointed out by the Learned Counsel for the Petitioner. However, we do not find that the defect pointed out is such that the affidavit should not be read in evidence. From a close scrutiny, it appears that the affidavit was prepared earlier and it was intended to be sworn on 12.7.1999, but somehow it could not be done. At page 9, swearing clause was typed on which figures '12' and '4.35 p.m.' were mentioned by hand but it could not be sworn and verified before the Oath Commissioner on the date and time mentioned above. It could be placed before the Oath Commissioner, Rishikesh (Dehradun) on 14.7.1999. The Oath Commissioner has affixed his seal and after filling up the columns, signed the same. It clearly means that the affidavit was sworn, signed and verified by Shri Tej Pal Singh. The earlier typed portion of the swearing affirmation has not been signed by the Oath Commissioner. In fact, it should have been scored off but as it was not signed by any Oath Commissioner, it does not affect the legality of the affidavit.

15. The second challenge in this connection is that the affidavit sworn and verified by the Oath Commissioner at Rishikesh cannot be filed and used in this Court. Chapter IV of Part I of the Rules of the Court contains provisions for affidavits and Oath Commissioners. Rule 1 provides for appointment of Oath

Commissioners by Hon^{ble} the Chief Justice for such period or periods for which they have been so appointed.

16. Rule 2 provides fee to be charged for verification of affidavits which may be prescribed from time to time by order of the Chief Justice. Rule 3 provides for maintaining register by the Oath Commissioner. Rule 4 is very material for the controversy raised which is being reproduced below :

4. Affidavit to bear serial number, etc.--Each affidavit shall have recorded on it the number and the year of the register in which it is entered and the serial number and the date of the entry. It shall also have the coupon, as supplied by the Court, affixed to it by the Oath Commissioner :

Provided that the affidavit verified by the Oath Commissioners of other States by an Officer of Jail in the State of Uttar Pradesh, by the Superintendent-cum-Accountant of the Office of Official Liquidator, High Court, Allahabad and by the Police Sub-Inspector (M) in the office of the Inspector General of Police at Lucknow on whom powers of Oath Commissioner have been conferred can be presented before the Court without such coupons.

17. Rule 5 further provides that an Oath Commissioner shall not allow an affidavit to be sworn before him unless it complies with the provisions of this Chapter. Admittedly, both on the counter-affidavits and supplementary counter-affidavit filed by Tej Pal Singh, coupons have not been affixed which, on conjoint reading of Rules 4 and 5, appears to be a necessary condition. Only certain affidavits have been exempted from affixation of coupons which are sworn in before the officers specified in the proviso. The Oath Commissioners appointed by District Judge are not included in the proviso.

18. For the aforesaid reason, in our opinion, the counter-affidavits and supplementary counter-affidavit filed by Tej Pal Singh are illegal and could not have been presented before the Court without affixing coupons nor could have been sworn before the Oath Commissioner and in absence of coupons, the affidavits cannot be said to be legal affidavits and are liable to be ignored. The objection raised by the Learned Counsel for the Petitioner is accepted.

19. The second challenge against the impugned order by the Learned Counsel for the Petitioner was that the impugned order is vitiated as it was mala fide, arbitrary and suffered from bias and was void-ab-initio. Learned Counsel has submitted that the detaining authority illegally directed that Petitioner shall be detained in District Jail, Moradabad, which is 200 kms. away from Dehradun, without any rhyme or reason. He also directed that the Petitioner can be detained as ordinary prisoner, the effect being that he shall be kept with the convicts and under-trials involved in criminal cases. It is submitted that the order was punitive in nature. The purpose was to cause maximum harassment to the Petitioner and to keep him away from his family members, friends and colleagues. It is further submitted that u/s 5 of the Act, the place of detention and other conditions of detention, namely, class, etc. could only be provided by

the State Government which power has not been delegated to the District Magistrate. The order thus suffered from serious illegality and stood vitiated. As the order was void -ab-initio, it could not be injected to life by the order of approval passed by the State Government on 30.6.1999. For this submission, Learned Counsel has placed reliance on the cases of A.K. Roy and Others Vs. Union of India (UOI) and Others, ; Aslam Khan v. Superintendent, District Jail XX (1983) ACC 202 (DB) and Makhan Singh Tarsikka Vs. The State of Punjab, .

20. Learned A.G.A., on the other hand, submitted that the power contemplated u/s 5 for providing place and other conditions of detention are only incidental and regulatory, breach of which will not affect the legality of the order of detention if the grounds were sufficient for passing an order of detention. It has also been submitted that Section 6 of the Act provides protection to the order of detention and the detaining authority while passing the order of detention could also provide for the place of detention and the class in which the detenu shall be kept in jail. In this connection, State Government issued Notification No. 2736/XXO-12G-80, dated 4.11.1980 in exercise of powers in clause (a) of Section 5 of the Act and made the order known as Uttar Pradesh National Security Prisoner (Conditions of Detention) Order, 1980 (hereinafter referred to as the Order of 1980) and by this general order, provided for the conditions of detention. Learned Counsel has submitted that under clause 4 of the aforesaid Order, a national security prisoner shall ordinarily be placed in ordinary class, unless otherwise classified in accordance with the provisions pertaining to the classification of convicts as contained in the Jail Manual, into the superior class by the detaining authority or District Magistrate of the district where he is for the time being detained. Learned A.G.A., in support of his submissions, has placed reliance on the following cases : Birendra K. Rai v. Union of India XXX (1993) ACC 375 (FB) ; Birendra Kumar Rai alias Virendra Kumar Rai Vs. Union of India (UOI) and Others, ; Ram Pravesh Singh v. D.M., Deoria and Ors., XXII(1985) ACC 28 (DB) and Jokhu Lal v. Superintendent, Central Jail, Naini, Allahabad and Ors. XXXV (1997) ACC 469 (FB).

21. Before we proceed with the discussion on the aforesaid legal question, it may be mentioned here that by our order dated 7.7.1999, we directed that Petitioner Prem Chandra Sharma shall immediately be transferred from Moradabad Jail to Dehradun Jail and he shall be provided superior class inside jail during the period of detention for which he may be entitled according to Jail Manual. However, the order was passed on the basis of a prima facie satisfaction but the legal question involved could not be examined in detail. As this question may arise in other cases of detention, in our opinion, it is desirable that we should decide this question in the light of the submissions made by the Learned Counsel for the parties. It is not disputed that power of detention by an order provided under sub-section (2) of Section 3 of the Act can be delegated to the District Magistrate under sub-section (3) of Section 3 of the Act which reads as under :

* * * * *

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section :

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

22. Sections 5 and 6 of the Act are also relevant for deciding the question which, for convenience, are being reproduced below :

5. Power to regulate place and conditions of detention.--Every person in respect of whom a detention order has been made shall be liable--

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify ; and

(b) to be removed from one place of detention to Anr. place of detention, whether within the same State or in Anr. State, by order of the appropriate Government :

Provided that no order shall be made by a State Government under, clause (b) for the removal of a person from one State to Anr. State except with the consent of the Government of that other State.

6. Detention orders not to be invalid or inoperative on certain grounds.--No detention order shall be invalid or inoperative merely by reason--

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

23. In our opinion, for determining the question in hand, it is necessary to examine as to whether while passing the order of detention, the direction regarding place and other conditions of detention are merely regulatory and ancillary and their breach will not vitiate the order of detention. A Constitution Bench of Hon^{ble} Supreme Court while examining the vires of the Act in case of A.K. Roy (supra) also considered the apprehensions expressed and objections raised against the provisions of Section 5 of the Act. The relevant portion of paragraphs 74 and 75 is being reproduced below :

74...The objection of the petitioners to these provisions on the ground of their

unreasonableness is not wholly without substance. Laws of preventive detention cannot, by the backdoor, introduce procedural measures of a punitive kind. Detention without trial is an evil to be suffered, but to no greater extent and in no greater measure than is minimally necessary in the interest of the country and the community. It is neither fair nor just that a detenu should have to suffer detention in 'such place' as the Government may specify. The normal rule has to be that the detenu will be kept in detention in a place which is within the environs of his or her ordinary place of residence. If a person ordinarily resides in Delhi, to keep him in detention in a far off place like Madras or Calcutta is a punitive measure by itself which, in matters of preventive detention at any rate, is not to be encouraged. Besides, keeping a person in detention in a place other than the one where he habitually resides makes it impossible for his friends and relatives to meet him or for the detenu to claim the advantage of facilities like having his own food. The requirements of administrative convenience, safety and security may justify in a given place the transfer of a detenu to a place other than that where he ordinarily resides, but that can only be by way of an exception and not as a matter of general rule. Even when a detenu is required to be kept in or transferred to a place which is other than his usual place of residence, he ought not to be sent to any far off place which, by the very reason of its distance, is likely to deprive him of the facilities to which he is entitled. Whatever smacks of punishment must be scrupulously avoided in matters of preventive detention.

75. Since Section 5 of the Act provides for, as shown by its marginal note, the power to regulate the place and conditions of detention, there is one more observation which we would like to make and which we consider as of great importance in matters of preventive detention. In order that the procedure attendant upon detentions should conform to the mandate of Article 21 in the matter of fairness, justness and reasonableness, we consider it imperative that immediately after a person is taken in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time to time. This Court has stated time and again that the person who is taken in custody does not forfeit, by reason of his arrest, all and every one of his fundamental rights. It is, therefore, necessary to treat the detenu consistently with human dignity and civilized norms of behaviour.

24. From the aforesaid observations of Hon'ble Supreme Court, it is apparent that provisions contained in Section 5 of the Act are only procedural and regulatory in nature. Hon'ble Supreme Court has only cautioned that procedural measures provided in Section 5 regarding place and other conditions of detention shall not be so enforced that they become punitive in nature.

A Full Bench of this Court in case of Birendra Kumar Rai (supra) examined in

detail the nature of the provisions contained in Section 5 of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, which is pari materia to Section 5 of the Act. The Full Bench after a detailed consideration concluded as under :

13...These provisions express the concern of the Legislature so that such person does not escape detention only on the grounds of technical violations of anything short of Constitutional violation, violation of principle of natural justice, or undue delay in disposal of detenu's representation, inaction of the authorities concerned. Thus, keeping in mind the scheme of the Act, object sought to be achieved by it, the law which was before 1988 Act, the mischief which could not be covered under the said law, the remedy the present law in trying to make, the inescapable conclusions in our considered opinion, in the alternative is that even if it could be said that for fixing the place of detention of a detenu while passing detention order u/s 3 an order has to be passed u/s 5 by the appropriate Government, then such a provision to the extent it affects detention order would only be directory and not mandatory. The object of detention as we have said before is--is only to prevent such person from his prejudicial activity affecting society and thus the place where he is to be detained could only be ancillary which may be changed from time to time. The challenge to detention order is founded primarily on the curtailment of his liberty enshrined in Article 19 and violation of Article 21 of the Constitution of India. Once detention order could be upheld not violative of Articles 19 and 21, then it would not fall only because he has not been kept at such a place so long his detention is legal, of course the Court has to examine whether custody of a detenu is legal or not at a particular time at place where he is lodged. So long a detenu could be said to be in legal custody may be on account of order other than challenged or in legal custody by virtue of any order though the detenu still not placed at the place of destination where he has to be lodged, he cannot be set at liberty only on account of latter's irregularity. Thus, any violation of the place specified and condition laid down under order passed u/s 5 may give rise to a detenu right for a direction to the authority concerned to comply the same but that cannot invalidate the detention order itself.

25. Thus, Hon'ble Supreme Court as well as Full Bench of this Court have found that nature of the provisions contained in Section 5 are only procedural and regulatory. They are only directory and not mandatory and any breach with regard to place of detention and other conditions of detention will not entitle the detenu to be released from detention. However, if the place of detention and other conditions of detention are punitive in nature, they may be rectified by order of the Court or by the detaining authority or the State Government. In the present case, as the grievance of the Petitioner regarding detention at a distant place and in an inferior class has already been set right, in our opinion, he is not entitled for any further relief on this basis. Submission of the Learned Counsel that the order of detention was void-ab-initio, cannot be accepted in view of the legal position explained by Hon'ble Supreme Court and Full Bench of this Court.

26. The next submission of the Learned Counsel for the Petitioner was that the impugned order of detention is not justified on the basis of the single incident dated 23.6.1999 in which Petitioner is alleged to be involved. In this connection Learned Counsel has submitted that the members of the Bar Association had gone to meet the District Magistrate in connection with their demand that S.D.O., Rishikesh, may be directed to hold his Court at Dehradun also at least once in a week. The Petitioner was only a member of this delegation. Even if the alleged incident is accepted to be true, it could only be a law and order problem and could not have potential and reach to disturb the public order and even tempo of the community in that area. For the aforesaid submission, Learned Counsel for the Petitioner has placed reliance on the cases of Debu Mahato Vs. The State of West Bengal, ; Mrs. T. Devaki Vs. Government of Tamil Nadu and others, and Surya Prakash Sharma v. State of U.P. and Ors. 1994 SCC 1691. In this connection, Learned Counsel also submitted that the solitary act mentioned in the grounds of detention has not been done by an organised gang of criminals. There was no further resolution by the Bar Association which could be justification of the fact that Petitioner shall indulge himself in similar activity. Learned Counsel has placed reliance on the case of Harish Kasana v. State of U.P. and Ors. 1998 UPCR 769 (DB).

27. Learned A.G.A., on the other hand, submitted that Petitioner led the group of 50-60 Advocates who ransacked the office of the District Magistrate, used abusive and insulting language for the District Magistrate. The incident took place when the entire administrative machinery of the district was busy in monthly meeting chaired by the District Magistrate in the meeting hall. The impact of the incident was that all the officers and employees assembled there were taken in a grip of fear and terror, persons of general public present in the Collectorate premises also felt terrorised. The manner in which the public order was disturbed has been mentioned in detail in the grounds served on the Petitioner. Such an incident affecting the backbone of the administration had sufficient potential and reach to disturb the public order and even tempo of the life in the premises. Learned Counsel has placed reliance on the cases of Shafiq Ahmad v. State of U.P. and Ors. AIR 1990 SC 220 ; Kamla Bait v. Commissioner of Police 1993 SCC 913 and Veeramani v. State of Tamilnadu 1994 SCC 482.

28. We have carefully considered the submissions of the Learned Counsel for the parties and have also gone through the cases relied on by them in support of their respective submissions. Hon'ble Supreme Court in case of Arun Ghosh Vs. State of West Bengal, , pointed out the difference between the maintenance of law and order and its disturbance and maintenance of public order and its disturbance. Relevant portion from para 3 of the judgment is being reproduced below :

* * * * *

Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be

distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs Anr.. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however, much one may dislike the act. Take Anr. case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from Anr. but in its potentiality it may be very different. Take the case of assault of girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take Anr. case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore, that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from Anr..

29. The case of Arun Ghosh (supra) has been generally followed by Hon^{ble} Supreme Court in subsequent cases. Now the facts of the present case are required to be considered in the light of the observations made by Hon^{ble} Supreme Court in the case of Arun Ghosh. The incident of 23.6.1999, as detailed in the grounds of detention, is that at about 2.05 p.m., when the Collector,

Dehradun, was holding monthly meeting of the officers of the district, a crowd of 50-60 Advocates led by Petitioner came before the meeting hall and broke open the iron bars and entered inside the meeting hall. Persuasion of the Collectorate employees, police and P.A.C. employees that the Collector is holding an important meeting could not be of any effect. Petitioner and his companions raised filthy and insulting slogans against the Collector. They also threatened the Collector that his face shall be blackened and also threatened him for life. They pushed away the employees and forcibly made entrance in the office of the District Magistrate in order to get their demands accepted by force. Petitioner had broken the telephone and glasses of windows and doors. He also destroyed the chairs and broke the glass affixed on the table and this way caused loss of the property of thousands of rupees. Other advocates gave full support to the Petitioner in this violent activity. It should not be forgotten that Petitioner is a practising advocate and he was accompanied by 50-60 other advocates. They are all law knowing persons. Advocates are supposed to be protectors of law of the land. The entire machinery responsible for the maintenance of law and order whether it is Court or administrative officers or the police force relies on the assistance from this class. Such activities, a few years back, could not be even imagined from the persons of this class. However, unfortunately members of bar associations have started adopting aggressive attitude and the incidents are not unknown that quite often, they even resort to physical assaults on the officers presiding a Court or administrative officers. Such incidents are taking place frequently. This background and unfortunate development in the attitude of the members of the bar is a relevant and valid consideration while considering the facts of the present case. If a similar activity is done by a common and lay man out of anger or annoyance against an officer or a group of officers, people may not like it and may also feel disturbed but the tempo of life will remain unaffected. However, in the present case as the author of the criminal activity was a law knowing person leading a group of persons of same class, the activity would have altogether a different impact on the community in general. At the time the incident took place, the Collector was not alone in the office but he was holding monthly meeting which is generally attended to by all the officers of the district. The activity complained of must have left impact of fear and terror on all the officers and employees present there. In our opinion, the activity complained of had sufficient potential to disturb the public order.

30. In such matters, what has to be seen by the Court is whether there was credible material before the detaining authority for forming subjective satisfaction for passing an order of preventive detention. It is well-settled that Court is not required to look into whether the material was sufficient or not. We have perused all the grounds served on the Petitioner and, in our opinion, there was credible material on which basis the detaining authority could be satisfied for passing the impugned order.

31. Learned Counsel also submitted that there was no subsequent resolution of the Bar Association on which basis the Petitioner could indulge in similar activity

in future and it was not necessary to prevent him by a preventive order. We are not impressed by this submission also. It is clearly mentioned in ground No. 8 that Sub-Inspector Kripal Singh lodged a report that Petitioner has threatened to put the Government vehicle provided to the Collector on fire and to destroy the Collectorate building. This announcement he made openly amongst his companions. Thus, there was material for the detaining authority to have apprehension that Petitioner may indulge himself in similar activity and to prevent him from acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order detaining him under the Act. In our considered opinion, the criminal activity had strong potential and reach to disturb the public order and the impugned order was justified in the facts and circumstances of the case.

32. The next submission of the Learned Counsel for the Petitioner challenging the order of detention was that bail application and the order granting bail to the Petitioner by the learned C.J.M. was not placed before the detaining authority and he passed the order in a mechanical manner without application of mind. For this submission, reliance has been placed on the case of *Anant Sakharam Raut v. State of Maharashtra* 1986 SCC 535 and *Rakshpal Singh v. Superintendent, District Jail*. 1985 (1) Crimes 175 (All).

33. Learned A.G.A. on the other hand, submitted that the Petitioner surrendered in Court of C.J.M. on 24.6.1999 itself and the bail application was posted for orders at 2.30 p.m. Bail was granted same day. The sponsoring authority had already made proposal on 23.6.1999 and the impugned order of detention was passed on 24.6.1999. In these facts and circumstances, there was no question of consideration of the bail application and the bail order by the detaining authority. All the cogent and relevant materials have been taken into consideration by the detaining authority and no prejudice has been caused to the Petitioner.

34. We have considered the submissions of the Learned Counsel for the parties. A Full Bench of this Court in case of *Chandresh Paswan v. State of U.P.* 1999 ALJ 1167, considered this question. In para 63 of the judgment, the Court held as under :

63. In the present case also the Petitioner was arrested only after service of the impugned order of detention. Thus, as observed by Hon^{ble} Supreme Court, the challenge cannot be accepted. There is no quarrel with the legal position that all the relevant facts and circumstances should be taken into account by the detaining authority which may have bearing in forming the subjective satisfaction but in the peculiar facts and circumstances of the present case, we are of the view that as the respondents were not possessed of the documents, there was no question for consideration by the detaining authority. On record, there was sufficient material for forming subjective satisfaction for passing an order of preventive detention against the Petitioner and non-consideration of the writ petition could not vitiate the order. It has to be seen in the facts of each case whether non-consideration of the alleged facts could vitiate the order or not. In

our considered view and particularly after perusal of the record of Writ Petition No. 2807 of 1997, the order does not suffer from any illegality on the alleged ground.

35. In view of the aforesaid legal position, in our view, the submission of the Learned Counsel has no merit and the impugned order does not suffer from any illegality for non-consideration of the bail application and the bail order.

36. The last submission of the Learned Counsel for the Petitioner was that the continued detention of Petitioner has been rendered illegal for non-consideration of his representation by the Central Government. Reliance has been placed on the case of Rajammal Vs. State of Tamil Nadu and Another, . From the counter-affidavit filed by Shri R.S. Agarwal, Joint Secretary, Home Department, U.P. Government, it is clear that the representation against the impugned order of detention was submitted by the Petitioner on 28.6.1999, which was forwarded by the District Magistrate, Dehradun, with his comments on 3.7.1999, which was received by the State Government on 4.7.1999. It was forwarded to the Central Government on 5.7.1999. In ordinary course, it must have been received by the Central Government and ought to have been decided expeditiously. Sufficient opportunity was given to the Learned Counsel for Union of India but no counter-affidavit has been filed till date indicating as to whether the representation of the Petitioner has been decided or not. In our opinion, the delay involved required explanation from the Central Government but it has not been furnished. In the circumstances, we have no option but to hold that continued detention of the Petitioner has been rendered illegal and he is entitled to be released.

37. For the reasons stated above, this petition is allowed. Though the impugned order of detention has been upheld, but as continued detention of the Petitioner has been found illegal, respondents are directed to set the Petitioner at liberty forthwith, if his detention is not required in any other case.