

(1973) 05 PAT CK 0003
In the Patna High Court
Case No : Criminal W.J.C. No. 47 of 1974

Ram Bahadur Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-05-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 144
Maintenance of Internal Security Act, 1971 — Section 3(1)(a)(ii)

Citation : (1974) PLJR 414

Hon'ble Judges : Nagendra Pd. Singh, J;A.N. Mukharji, J

Bench : Division Bench

Advocate : Thakur Prasad, Ram Suresh Roy and Chandramauli Narain Prasad, for the Appellant; Balabhadra Prasad Singh, Advocate General and Brishketu Sharan Sinha for the State, for the Respondent

Judgement

Nagendra Pd. Singh, J.—This is an application for a writ in the nature of habeas corpus under Article 226 of the Constitution of India filed by the petitioner, who has been detained in the Bankipore Central Jail in pursuance of an order passed by the District Magistrate, Patna, on the 9th April, 1974, in exercise of the powers conferred on him under Sub-section (1)(a)(ii) of Section 3 of the Maintenance of Internal Security Act, 1971 (Act No. 26 of 1971)--hereinafter referred to as the "Act" a copy whereof is Annexure "1" to the writ petition. The case of the petitioner is that he is the Secretary of the All India Vidyarthi Parishad, the aim of the said Parishad being to inculcate discipline, patriotism, character and devotion to study amongst the students. The said Parishad has branches in all the Universities and colleges of India and more than a lac teachers and students are its members throughout the country. The students of the Patna University placed before the Chief Minister, Bihar, Education Minister, Bihar and the District Magistrate, Patna certain demands, including that the students were facing hard time due to non-availability of food articles, paper, copy books, the prices whereof have gone high and some steps should be taken

by Government in that respect. It is alleged that verbal assurances had been given that those grievances would be considered, but nothing had been done by the Chief Minister or the Education Minister. On the 17th and 18th of February, 1974, there was a meeting of the student leaders in the campus of the Patna University in which the problems facing the student community were discussed. The petitioner alleges that, without any justification he was arrested on the 9th of April, 1974 and sent to Bankipore jail. Grounds of detention were served on him, as required by Section 8 of the Act, on the 13th of April, 1974. A copy of the grounds of his detention is Annexure "2" to the writ application. According to the petitioner, the said grounds for detention are vague and irrelevant and that they have no nexus with the maintenance of public order, and, as such, his detention is without any authority in law.

2. As on behalf of the petitioner each of the seven grounds of detention served on the petitioner has been characterised as vague and irrelevant and as having no connection with the "maintenance of public order", it is essential to examine them. The grounds are:--

1 Whereas the said Shri Ram Bahadur Rai, in his capacity as Secretary of All India Vidyarthi Parishad, attended a meeting of the Bihar Rajya Chatra Neta Sammelan held on the 17th and 18th February, 1974 in Patna University campus, in which, from amongst other things, it was decided at his instance, to start a Gujrat-type agitation in Bihar and whereas in the same meeting it was also decided to resort to hunger strike and gherao of the office of the Chief Minister, Bihar, District Magistrate, Patna and other officers;

2. Whereas a meeting of the students steering committee was held on the 1st March, 1974 under the President ship of Shri Laloo Prasad Yadav where it was decided to form a Sanchalan Samiti for conducting the students' agitation and whereas in the same meeting you readily accepted to become one of the members of the Sanchalan Samiti;

3. Whereas the said Shri Ram Bahadur Rai attended "a meeting of the Sanchalan Samiti on 4.3.74 at the Legislature Club where he was instrumental in forcing a decision to gherao the Assembly on the 18th March, 1974 and to prevent the Governor from addressing the Assembly on the same date;

4. Whereas the said Shri Ram Bahadur Rai further attended a meeting of the Bihar Rajya Chatra Sangharsa Samiti on the 12th March, 1974 in the office of the Students' Union, Patna University, in which it was decided, at his instance, to commence the gherao of the Assembly on the 18th March, 1974 from 8.30 A.M.

5. Whereas there are reports to indicate that the said Shri Ram. Bahadur Rai was actually leading and actively participating in the gherao of the Assembly on the 18th March, 1974, and

6. Whereas even after the 18th March, 74, the said Shri Ram Bahadur Rai has been actively guiding the students' agitation and with this end in view he

convened a meeting of the students in the National Hall Kadmkuar, Patna on the 8th April, 1974, wherein he exhorted them to paralyse the functioning of the Government Offices with effect from the 9th April, 1974 by resorting to gherao, dharna etc.

6. Whereas the said Shri Ram Bahadur Rai actually led a demonstration of the students on the 9th April, 74 in defiance of the prohibitory orders u/s 144 Cr. P.C. with a clear intention and known objective to gherao the Government Offices, particularly the Secretariat buildings;

7. I am, therefore, satisfied that, in the circumstances mentioned above, if you are allowed to remain at large, you will indulge in further activities prejudicial to the maintenance of public order therefore, I.V.S. Dubey, District Magistrate, Patna, detain you in custody with a view to preventing you from acting in any manner prejudicial to the maintenance of public order.

(It may be mentioned that there are two grounds which have been numbered as "5", obviously due to typing mistake.)

3. Learned counsel appearing for the petitioner has urged that, under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in accordance with the procedure established by law. u/s 3 of the Act, power has, however, been vested in the Central Government or the State Government to deprive a person of his personal liberty, provided the conditions requisite for the exercise of such power are fulfilled. The relevant portion of Section 3 of the Act reads as under:

(1) The Central Government or the State Government may--

(a) If satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to--

(i) The defence of India, the relations of India with foreign powers, or the security of India, or

(ii) The security of the State or the maintenance of public order, or

(iii) The maintenance of supplies and services essential to the community, or

x x x

It is necessary so to do, make an order directing that such person be detained.

4. In the present case we are concerned with the question as to whether the acts of the petitioner complained against were of such a nature that it was necessary to keep him under detention in order to prevent him from acting in any manner prejudicial to the "maintenance of public order."

5. Learned counsel for the petitioner has submitted that, if any of the grounds served on the petitioner is found to be vague or irrelevant, this Court has ample powers to quash the order of his detention, because, in such cases, there is a

clear breach of the provisions of Article 22(5) of the Constitution, which provides that a person detained shall, as soon as may be, communicated the grounds on which the order has been made and shall be given earliest opportunity of making a representation against the order. This clause, with slight changes here and there, has also been incorporated in Section 8 of the Act. It is urged that, if the grounds are vague and irrelevant, the petitioner has not been furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation". In this connection reliance has been placed on a judgment of the Supreme Court in (1) *Dr. Ram Krishan Bhardwaj V. The State of Delhi* where their Lordships observed as follows:--

Preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court. In this case, the petitioner has the right, under Art. 22(5), as interpreted by this Court by a majority, to be furnished with particulars of the grounds of his detention "sufficient to enable him to make a representation which on being considered may give relief to him". We are of opinion that this constitutional requirement must be satisfied with respect to each of the grounds communicated to the person detained.

Reference was also made to the cases of (2) *Motilal Jain V. State of Bihar*, (3) *Tapan Kumar Mukherjee V. State of West Bengal* and (4) *Bhupat Chandra Ghosh V. Arif Ali*.

6. In view of the several decisions of the Supreme Court, it is almost settled that, if the grounds served on the petitioner are vague or irrelevant, this Court can quash the order of his detention. But the question for consideration is whether any of the grounds or all the grounds served on the petitioner are of a nature which do not convey sufficient information to the petitioner to enable him to make a representation against the order of his detention.

7. Learned counsel for the petitioner urged that ground no. 1 recites that the petitioner, in his capacity as the Secretary of the All India Vidyarthi Parishad, attended a meeting of the Bihar Rajya Chatra Neta Sammelan held on the 17th and 18th of February, 1974 in the campus of the Patna University, in which it was decided to start a Gujrat-type agitation in Bihar and to resort to hunger strike and gherao of the offices of the Chief Minister, Bihar, District Magistrate, Patna and other officers. According to learned counsel for the petitioner, firstly, this ground alleges activities of the 17th and 18th February, 1974 which can have no connection with the satisfaction of the District Magistrate to detain the petitioner on the 9th April, 1974. Secondly, it is urged that the petitioner cannot appreciate the allegation against him that it had been decided "to start a Gujrat-type agitation". It was also submitted that from the said ground it does not appear that any decision at the instance of the petitioner had been taken to start a violent agitation or disturbance.

8. So far as ground no. 2 is concerned, learned counsel for the petitioner has submitted that the only allegation against the petitioner is that in a meeting held on the 1st March, 1974 it was decided to form a Sanchalan Samiti. It was argued that the decision to form a Sanchalan Samiti for conducting the students' agitation does not mean any violent agitation, and as such, it cannot be said that that could be a ground for the satisfaction of the District Magistrate to put the petitioner under detention for maintenance of public order.

9. With regard to ground no. 3, it was urged on behalf of the petitioner that the only allegation against him is that he attended a meeting of the said Sanchalan Samiti on the 4th March, 1974 where he was instrumental in forcing a decision to gherao the Assembly on the 18th March, 1974 and to prevent the Governor from addressing the Assembly on that day. Learned counsel for the petitioner submitted that, even on its face value, it cannot be said that the petitioner was instrumental in forcing a decision to take any violent step likely to disturb the public order.

10. Similarly, with regard to ground no. 4 it was submitted on behalf of the petitioner that the only allegation against the petitioner is that he attended a meeting on the 12th March, 1974 where it was decided at his instance to commence the gherao of the Assembly on the 18th March, 1974 from 8.30 a.m. Learned counsel argued that any decision taken at the instance of the petitioner to gherao the Assembly cannot ipso facto, be taken to be an act prejudicial to the "maintenance of public order". The gherao could be peaceful also.

11. In first ground no. 5 it is alleged that the petitioner was "actually leading and actively participating in the gherao of the Assembly on the 18th March, 1974". According to learned counsel for the petitioner, there is nothing in this ground to show that the petitioner was instrumental to the commission of any violent act for disturbing the public order in any manner.

12. In respect of second ground no. 5 learned counsel for the petitioner urged that the petitioner had been charged that, even after the 18th March, 1974, the petitioner had been actively guiding the students' agitation and with that end in view, convened a meeting of the students on the 8th April, 1974 where he exhorted them to paralyse the functioning of the Government offices with effect from the 9th April, 1974 by resorting to gherao, dharna etc. It was submitted that, even if this allegation be true, there is nothing in the said ground that the avowed object mentioned therein had to be achieved by any violence, and as such, that had no nexus with the maintenance of public order.

13. With respect to the last ground, this, ground no. 6 (which should have been ground no. 7) it was urged by learned counsel for the petitioner that the petitioner is alleged to have led a demonstration of students on the 9th April, 1974 in defiance of the prohibitory order u/s 144 of the Code of Criminal Procedure, 1898 with a clear intention and object "to gherao the Government offices, particularly the Secretariat buildings". It was argued that could not be

the basis for the detention of the petitioner, because the allegation against the petitioner is that he had violated the prohibitory order u/s 144 of the Code, for which he could be prosecuted under the provisions of the Indian Penal Code and there was no necessity for the exercise of the powers under the Act.

14. Learned counsel for the petitioner has submitted that most of the grounds served on the petitioner relate either to the decision in respect of making gherao of the Assembly or other public buildings or officers or in respect of the participation of the petitioner in some of the meetings, processions and gheraos. According to learned counsel for the petitioner there is nothing in the aforesaid grounds to show that there was any threat to the maintenance of public order; at the most, it could have some bearing on the question of maintenance of law and order.

15. It is true that, if it is held that the allegations against the petitioner even taken on their face value, raise a question of maintenance of law and order, the order of detention is to be struck down, because activities which create a problem of maintenance of law and order cannot be deemed to be prejudicial to the maintenance of public order. This aspect of the matter was fully considered in the case of (5) Ram Manohar Lohia V. The State of Bihar, where it was held that the contravention of law always affects order; but before it could be said to affect public order, it must affect the community or the public at large. In this connection Hidayatullah, J. (as he then was) observed as follows:

"One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represent security of State. It is then easy to see that an act may affect law and order but not public order just as act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules" (Para 52, pp. 758-59)

16. A similar view was expressed in (6) Pushkar Mukherjee V. The State of West Bengal, where their Lordships, while dealing with the distinction between "Law and order" and "public order" observed as follows:

In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order come within the scope of the Act. (p. 856)

17. Learned Advocate-General, appearing for the State, has, however, urged that a mere reference to the grounds served on the petitioner individually as well as collectively disclose that the conduct of the petitioner between the 17th of

February, 1974 and the 9th of April, 1974 has been such which could have given legitimate satisfaction to the detaining authority that, if the petitioner was allowed to remain at large, his actions were bound to be prejudicial to the maintenance of public order. Learned Advocate-General submitted that the grounds to be served on a detainee must be in existence when the order of detention is made and these grounds by their very nature are conclusions of facts, and not a complete detailed recital of all the facts. A detainee according to him, cannot claim that, along with the grounds, he should also be supplied the details of the evidence which has formed the basis of the satisfaction of the detaining authority. In this connection, he placed reliance on the observations of the Supreme Court in (7) The State of Bombay V. Atma Ram Shridhar Vaidya.

It is obvious that the grounds for making the order as mentioned above are the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds, therefore, must be in existence when the order is made. By their very nature the grounds are conclusions of facts and not a complete detailed recital of all the facts. The conclusions drawn from the available fact will show in which of the three categories of prejudicial acts the suspected activity of the particular person is considered to fall. These conclusions are the "grounds" and they must be supplied.

It has been submitted on behalf of the State that there has been a compliance with the grounds which are conclusion of facts in possession of the detaining authority had been served on the petitioner in this case and it could not be urged that the petitioner had been in any way prejudiced in making earliest representation against the order of his detention. Our attention was also drawn to the observations of the Supreme Court in the aforesaid case where it was also observed that the authority making the order cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence, although it may be indicative of strong probability of the impending commission of a prejudicial act, and it would be legitimate in those circumstances to pass an order of detention. On the basis of the said judgment, learned Advocate General has argued that the question of satisfaction of the detaining authority, except on the ground of mala fides, cannot be challenged in Court. In this connection, our attention was drawn to the observation at page 160 of the aforesaid judgment to the following effect:

Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by the wording of the section. It is not for the Court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a Court of law. Such detention orders are passed on information

and materials which may not be strictly admissible as evidence under the Evidence Act in a Court, but which the law, taking into consideration the needs and exigencies of administration, has allowed to be considered sufficient for the subjective decision of the Government.

Similar observations were made in (8) *Khagen Sarkar V. The State of West Bengal* saying that the satisfaction which is the basis of the order is of the District Magistrate, and not of the Court and that the Court would not sit in appeal against the impugned order.

18. Learned Advocate-General challenged the assertion of the petitioner that in the grounds served on him at the most a question relating only to law and order had been made out, and submitted that the activities of the petitioner mentioned in the grounds are related to disturbing public peace paralysing the activities of the Government and the public in general by violent means. When any purpose is to be achieved by gherao and agitation, violence is implicit. He contended that the word gherao is now fully understood in this country that it amounts to a wrongful restraint and confinement of the person concerned and a means of achieving any purpose accompanied with violence. In this connection he referred to the case of (9) *Jay Engineering Works Ltd. V. State of West Bengal* where it was observed:

In view of the observations made above we might now define the word "gherao" as a physical blockade of a target, either by encirclement or forcible occupation. The "target" may be a place or supervisory staff of an industrial establishment. The blockade may be complete or partial and is invariably accompanied by wrongful restraint, and/or wrongful confinement, and occasionally accompanied by assault, criminal trespass, mischief to person and property, unlawful assembly and various other criminal offences. Some of the offences complained of are cruel and inhuman, like confinement in a small space without lights or fans and for long periods without food or communication with the outside world. The persons confined are beaten, humiliated by abuse and not allowed even to answer calls of nature and subjected to various other forms of torture, and are "completely at the mercy of besiegers. The object is to compel those who control industry to submit to the demands of the workers, without recourse to the machinery provided for by law and in wanton disregard of it. In short, to achieve their object, not by peaceful means, but by violence."

In this connection reference was also made to Burrows' "Words and Phrases", Volume IV, 1944 edition, as to what "peaceful picketing" means. There it has been stated as follows:

It is a negation in terms, for "picketing" as conducted here cannot be described as peaceful. While violence did not occur, it was not due to lack of provocation; the display of organized labour strength and the atmosphere of labour power cowed active opposition and discouraged retaliatory or protective measures which would have led inevitably to violence. Without intimidation, obstruction

and moral coercion it was useless for the purposes employed; with them it was provocative. Professor Dicey in the introductory chapter to "The Law of the Constitution", 8th ed. 1931, at p. 40 wrote; "Hence the invention of that self-contradictory idea of "peaceful picketing", which is no more capable of real existence than would be "peaceful war" or "unoppressive oppression"..

19. While examining the question of vagueness and relevancy of the grounds served on the petitioner, one thing has to be borne in mind that, although the grounds are seven in number, yet most of them relate to the past conduct, activities and the antecedent history of the petitioner, which had been taken into consideration by the detaining authority in making the detention order. In that sense, the grounds are not absolutely independent and unconnected. As such, in my opinion, the grounds should be first examined individually to find out as to whether anyone of them is so vague as to prejudice the petitioner in making an effective representation. If it is held that none of the grounds is vague in that sense, then the next question falling for decision would be as to whether anyone of those grounds is such which has on relevancy whatsoever to the maintenance of public order.

20. In six out of the seven grounds the gravamen of the charge against the petitioner is that either he was present in the meetings in which the decision to make gherao of the Assembly, Government buildings and offices was taken, or he was instrumental in forcing the said decision, or that he actually participated in the gherao. In ground no. 2, the word "gherao" is not there. It has been alleged there that in the meeting of the 1st March, 1974 a Sanchalan Samiti was formed to conduct the students' agitation, and the petitioner readily accepted to become one of the members of the said Samiti. It has not been stated anywhere in the petition filed before this Court that the petitioner does not know the meaning of the word "gherao". He has simply challenged that he does not know the meaning of the words "Gujrat-type agitation" mentioned in ground no. 1. A bare reference to the said ground will show that the main emphasis in the said ground is on the decision taken in the meetings of the 17th and the 18th February, 1974 for resorting to hunger strike and gherao of different offices. The decision to start "Gujrat-type agitation in Bihar" has been incidentally mentioned. In this connection reliance was placed on behalf of the petitioner on a judgment of the Supreme Court in (3) Tapan Kumar Mukherjee V. State of West Bengal where in one of the grounds it had been mentioned that the detenue and his associates had asked one Bibhuti Bhusan Ghosh to rub the anti-naxalite slogans written on the wall of his house and it was held the said ground was vague inasmuch as there was nothing to connect as to what relevancy the anti-naxalite slogans had and what was meant thereby. In the present case, part of ground no. 1 simply recites that in the meetings of the 17th and the 18th February, 1974 it was decided to start a Gujrat-type agitation in Bihar. It simply recites regarding the alleged decision taken in the meetings. Had it been stated that the petitioner and his associates had started a Gujrat-type agitation, the matter would have been different, because then it would have amounted to levelling a charge of a

particular kind, without giving details thereof. The petitioner can very well make an effective representation against this part of the allegation.

21. Learned counsel for the petitioner, in support of his contention that the grounds are vague, also submitted that no particulars of the alleged activities are mentioned in some of the grounds. By "particulars" he meant that in the grounds the names of the other students, who are alleged to be present in the different meetings, should have been mentioned. In this connection he has placed reliance on a decision of the Supreme Court in (10) Chaju Ram V. The State of Jammu and Kashmir. In that case there were three grounds of detention against the detainee. While considering the question of vagueness it was observed that the detainee had been charged to have incited landless people to forcibly occupy the lands comprised in a farm. In that connection it was observed that no details of the leaders of the conference or of the persons incited or the dates on which the detainee conspired or incited had been mentioned. It was held that in those circumstances it was impossible for the detainee to make a representation against the said, grounds. The facts of the present case are different inasmuch as in the present case in every ground the dates have been given, in most of them the places of the meetings are also mentioned and it is obvious that the agitation was by the students and most of the meetings where decision to make gherao was taken were attended by students. The petitioner is alleged to have taken a leading part on different occasions. In that view of the matter, there is no vagueness of a nature so as to create any difficulty in the way of the petitioner's making a representation against those grounds.

22. Learned counsel for the petitioner raised a separate argument in respect of ground no. 6. He has submitted that in ground no. 6 (which should have been ground no. 7) it has been stated that the petitioner led a demonstration of the students on the 9th April, 1974 in defiance of the prohibitory order u/s 144 of the Code of Criminal Procedure with an intention to gherao the different offices. But it has been stated in the writ application, in paragraph 14, that the petitioner had been arrested in the morning of the 9th April, 1974 and had been kept for the whole day in Kotwali police station, and at about 2.30 p.m. he was released from the police custody, and, as such, there was no question of the petitioner participating in the procession which had been taken out in defiance of the prohibitory order u/s 144. Learned counsel drew our attention to paragraph 5 of the counter-affidavit filed on behalf of the State, and has urged that in the said paragraph there is no specific denial that the petitioner was arrested in the morning. He contended that indirectly the allegation of arrest in the morning is admitted and, as such, ground no. 6 is, per se, baseless inasmuch as the petitioner could not have been present in the procession when he was in the police custody. In this connection reliance was placed on a judgment of the Supreme Court in (11) Mintu Bhakta V. The State of West Bengal. In that case it had been proved that the detainee had been taken in custody on the 27th June, 1971; but, in spite of that, in one of the grounds the detainee had been charged in respect of an incident alleged to have taken place on the 28th June, 1971. In

that connection it was held that the said ground was baseless because there was no question of the detenue taking part in the incident on the 28th June, 1971 when he was in custody since the 27th June, 1971. In my opinion, the facts of the present case are different. It is the admitted case of both the parties that the petitioner had been taken in custody sometime on the 9th April, 1974. In the writ application the petitioner has stated that he had been arrested in the morning. This does not belie the case of the State that the petitioner was arrested on the 9th April, 1974 when he was leading a demonstration of the students. Moreover, in paragraph 5 of the counter affidavit, it is clearly stated that the petitioner had been arrested on the Hardinge Road for violating orders u/s 144 of the Code of Criminal Procedure. As such, there is no question of admission by the State that petitioner had been arrested in the morning before the demonstration. In these circumstances, it has to be held that none of the grounds is vague, denying the right of the petitioner to make an effective representation.

23. So far as the question as to whether the grounds have any nexus with the alleged activities of the petitioner which were prejudicial to the maintenance of public order is concerned, I have already stated that the detaining authority has mentioned the activities for the purpose of his coming to the conclusion on the 9th April, 1974. Almost all the grounds, except no. 2, in the present case relate to the decision of making gherao and implementation thereof in which the petitioner is alleged to have taken active part. In my opinion, per se, in making gherao an element of compulsion is always there, the object being to compel the person or persons concerned to submit to the demands of the agitators. Once there is resistance on the part of a person or persons confined, it may turn into a violent situation affecting public peace and challenge to the maintenance of public order. On the 9th April, 1974, when the impugned order of detention was passed, it could not be said that the activities of petitioner between the 17th February, 1974 and that date, namely, the 9th April, 1974, had no relevancy in the taking of the decision as to whether the activities of the petitioner were prejudicial to the maintenance of public order. In the grounds it has been specifically mentioned that the gherao of different Governments building, offices and the Assembly was made with the objects of paralysing the functioning of those offices and of the Assembly and to obstruct the general public from pursuing their normal duties. The gherao of so many Government buildings and offices and of the Assembly was bound to affect the public in general and to raise a question of maintenance of public order.

24. Learned counsel for the petitioner has urged that in ground no 2 there is no mention of the word "gherao" and the only allegation that a Sanchalan Samiti for conducting students' agitation was formed and the petitioner became a member thereof. The word "agitate", according to Chambers' Dictionary, apart from other meanings means "to stir violently". In the context of the students' agitation and the other grounds given therein it can be read to mean an agitation accompanied with compulsion. In my opinion, each of the grounds is relevant and germane to

the maintenance of public order. The jurisdiction of the preventive detention is designed to prevent mischief from being committed by depriving the suspected person of necessary facility for carrying out the purpose. If the detaining authority was satisfied, on the grounds which are germane and relevant, then it is not for this Court to consider objectively how imminent was the likelihood of the detainee indulging in these activities.

25. Learned Advocate-General also argued that, while examining as to how far the grounds of detention are relevant to the maintenance of public order, this Court should also take judicial notice of the facts and happenings which took place on the 18th March, 1974, in which several buildings, both private and official, were burnt in and around the Assembly and in other parts of the town of Patna, including the Search-light Press, during the gherao made. The life of the whole town was completely paralysed and, to control violence, firing had to be resorted to at several places in which several persons received injuries, some of whom died also, and curfew had to be imposed for several days. Even the proceedings of this Court had to be suspended soon after the luncheon interval on the 18th March, 1974; there was practically no work on the 19th and the Court had to be closed on the 20th and the 21st March, 1974, because it was not possible in the prevailing conditions in the town to carry on the normal work of the Court. Learned Advocate-General submitted that it is open to this Court to take judicial notice of those facts u/s 57 of the Evidence Act.

26. In support of this contention, reliance was placed on several decisions of different High Courts in India and of the Supreme Court. In (12) *Prabadhchandra Chakravarty V. Emperor* the petitioner was being tried by a Special Magistrate under the Emergency Powers Ordinance (No. II of 1932) for picketing at Ganja shop at Natio. On trial, he was convicted and sentenced. Before the Calcutta High Court, a point was raised that the order had been made u/s 28 of the Ordinance which contemplated only those cases in which, in the opinion of the Court, the act complained of was prejudicial to public safety or peace and there was no finding by the Magistrate on that point, and, as such, the conviction was without jurisdiction. Their Lordships accepted the contention raised on behalf of the petitioner that there was no finding by the Magistrate that the act was committed in furtherance of a movement prejudicial to the public safety or peace. But, they took judicial notice of the fact observing:

We were asked to take judicial notice of the fact that what is described in the petition as the present political movement was, in fact, a movement prejudicial to the public safety or peace and we think that we are entitled to do so.

Thus, in that case, the picketing, on the facts and in the circumstances, was held to be a movement prejudicial to the public safety of which judicial notice was taken. Reference has also been made to a Full Bench decision of the Allahabad High Court in (13) *Saligram V. Emperor* where the petitioner, along with others, had been put on trial and convicted by Special Magistrate in accordance with the provisions of Ordinance No. II of 1942 with respect to an offence punishable u/s

395 of the Indian Penal Code. In the said Ordinance, there was no provision for appeal against the decision of the Special Magistrate. The said Ordinance had been promulgated with a view to provide for setting up a "Special Criminal Court" and to meet an emergency, which was indicated by the preamble of the Ordinance itself. The validity of the Ordinance as well as of the amendment made therein was being questioned and Iqbal Ahmad, C.J., on behalf of the Court, while upholding the validity of the Ordinance, observed as follows:

It will not be out of place to mention just a few of the acts committed by the people which necessitated the amendment of Ordinance No. 2 by Ordinance No. 42. Telegraph wires had been cut, rails had been removed. These acts by themselves constituted grave offence because they had a tendency to paralyse the administration. But they are not all. They were accompanied or followed by wholesale destruction of property, both public and private. Post offices, police stations, railway stations, in fact buildings of almost all description came in for special attention at the hands who were out for mischief. Even schools and colleges, which must receive special consideration, were not spared. Attempts were made to dissuade the servants of the Crown from doing their duty. Arson and murder in some areas disfigured the normal life of society. These are matters of which I can take judicial notice. If authority is necessary there is the leading case of (12) *Probodh Chandra Chakravarty Vs. Emperor*, which establishes the proposition that a Court can take judicial notice of a political movement, prejudicial to the public safety or peace.

Similarly, a Full Bench of this Court in (14) *Nathuni Thakur V. Ramsaran Singh* while considering the meaning of the expression "unfair and inequitable" occurring in Section 35 of the Bengal Tenancy Act, 1885, was asked to take judicial notice of certain economic changes in value, in terms of money, of foodstuffs, and Courtney Terrell, C.J., speaking on behalf of the Court, observed as follows:

The recent great and sudden economic change in the value, in terms of money, of foodstuffs is a notorious fact. A Court which declined to take judicial notice of it would, I imagine serenely, ignore an earthquake.

27. In (15) *Fabba Mallah V. Emperor* a Bench of this Court, while considering the legality of the conviction of the appellants for waging war against the King and to meet the argument raised on behalf of the appellants that an attack made on one police-station could not amount to waging war against the King, observed as follows:

Among the slogans uttered by the mob were, it was said, "Ungrez raj nash ho" and "congress raj kaem ho". That the Congress party is a political party with a very large number of adherents and that at or about the time when this police station at Minapur was attacked, other police stations and public buildings over a wide area elsewhere were also attacked by persons who professed to be members of the congress party and to be acting on its behalf, are facts so

notorious that judicial notice may, I think, properly be taken of them.

In (16) *Ram Tarak Singha V. Saligram Singha* it was observed that the Court had rightly taken judicial notice of the words "economic depression" and had rightly accepted the defendants' case that this depression was because of the fall in prices. In (17) *Sheonath V. The State* it was held that the Court could take judicial notice of the fact that Sambalpur district was a surplus district as regards rice and there was extensive smuggling from the district to the adjacent States such as Bihar and Central Provinces. A Full Bench of the Nagpur High Court in (18) *K.J.V. Srimati K. Wife of K.J.* observed:--

His detention under the Marwar Public Safety Act was apparently for no (Sic) offence and was a preventive detention for the purposes of law and order. It common knowledge, and we can take judicial notice of the fact that people indulging in certain activities are regarded as acting prejudicially to the continuance of law and order.

In the Special Bench decision of the Calcutta High Court reported in (9) *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*, at page 445, while considering the question as to what was the Government attitude towards the gherao made, judicial notice was taken and it was observed:--

(57) The learned Advocate General objected to any reliance being placed on the press reports set out above, because, according to him, they were not admissible in evidence, in the absence of affidavits by the correspondents or the reporters. He is right in this contention and the stand taken by him finds support from the decision of the Supreme Court in *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, . I do not intend to proceed on the basis of the press reports and come to the finding that either Chief Minister of West Bengal (Mr. Ajoy Kumar Mukherjee) or the Labour Minister (Mr. Subodh Banerjee) actually said all that the press reported. I take notice of them, because they go to show that gheraos and the Government attitude towards them met with adverse reception in many quarters and this is such a notorious fact that I am entitled to take judicial notice thereof.

Even the Supreme Court in (19) *Shivnath Rai Ram Dhari V. The Union of India* took judicial notice of the conditions prevailing during the partition of the country in the year 1947.

28. Learned counsel for the petitioner could not contend that this Court cannot take judicial notice of the aforesaid facts u/s 57 of the Evidence Act, but submitted that the said section has no applicability to a writ application in connection with a detention order. He further submitted that most of the cases relied on behalf of the State of Bihar related to taking of judicial notice after conclusion of the trial. In my opinion, judicial notice can be taken of facts permissible, while considering the question as to how far the grounds are relevant and germane to the maintenance of public order even in a writ application for quashing a detention order. Even in the aforesaid case reported in

(9) AIR 1868 Calcutta 407 judicial notice was taken in a writ application. In my view, it is open to us to take judicial notice at least of the facts that, on the 18th March, 1974, the atmosphere of the whole town of Patna was disturbed and the situation became so tense that even the proceedings of this Court had to be suspended and ultimately this Court and other offices had to be closed and curfew had to be imposed for several days. Taking into consideration the circumstances prevailing on the 18th March, 1974 and thereafter, along with the facts stated in the grounds served on the petitioner, it has to be held that the grounds for detention are relevant and germane to the object which is sought to be achieved by Section 3 of the Act, for the purpose of detaining a person who is likely to act in a manner prejudicial to maintenance of public order. The District Magistrate passed the order of detention of the petitioner on the 9th April, 1974, saying that he was satisfied that, if the petitioner was allowed to remain at large, he would indulge in further activities prejudicial to the maintenance, of public order and that he considered it necessary to detain the petitioner in custody "with a view to preventing" him "from acting in any manner prejudicial to the maintenance of public order". This was a matter of his subjective satisfaction and this Court cannot sit in appeal over the same.

29. It was also contended on behalf of the petitioner that the alleged activities of the petitioner from the 17th February, 1974 to the 18th March, 1974 could not be the basis for the detention order which was passed on the 9th April, 1974. There is no substance in this contention, because it is always the past conduct, activities or the antecedent history of a person which is taken into account by the detaining authority in making a detention order. As was observed in (20) *Ujagar Singh V. State of Punjab*:

The past conduct or antecedent history of a person can be taken into account when making a detention order, and, as a matter of fact, it is largely from prior events showing the tendencies or inclinations of the man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.

The same view has been reiterated in (21) *Masood Alam V. Union of India*. In (22) *Borjahan Gorey V. The State of West Bengal* it was observed:

This jurisdiction is sometimes called the jurisdiction of suspicion founded on past incidents and depending on subjective satisfaction.

When a fresh call was given on the 8th April, 1974 by the petitioner and other to paralyse the functioning of Government offices with effect from the 9th April, 1974, by resorting to further gherao and dharna, and a procession, in defiance of the prohibitory order u/s 144 of the Code of Criminal Procedure, was taken out on the 9th April, 1974 with the object of again making gherao of Government offices, the District Magistrate could have taken into account the alleged past conduct of the petitioner for being satisfied that if the petitioner was allowed to remain at large, he could indulge in further activities prejudicial to the

maintenance of public order.

30. Learned counsel for the petitioner raised an argument in connection with ground no. 6 that the allegation regarding taking out a procession in defiance of an order u/s 144 of the Code of Criminal Procedure can be basis of a trial for an offence under the Indian Penal Code, and not for action under the Act. In my opinion, there is no substance in the contention of the learned counsel for the petitioner. A person who is an accused of a substantive offence can at the same time be a danger to the maintenance of public order on account of his likely future activities. In the case of (22) Borjahan it was observed:

4. Now merely because a detainee is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure, would not by itself debar the Government from taking action for his detention under the Act....Judicial trial for punishing the accused for the commission of an offence as also preventive security proceedings in a criminal court against a person merely for keeping the peace or for good behaviour under Chapter VIII of the Code of Criminal Procedure, we may appropriately point it, is a jurisdiction distinct from that of detention under the Act, which has in view the object of preventing the detainee from acting in any manner prejudicial inter alia to the security of the State or maintenance of public order. The fields of these two jurisdictions are not co-extensive nor are they alternative.

The same view expressed in (21) Masood Alam V. Union of India supra.

31. Taking into consideration the facts and the circumstances of the present case, I am of the view that none of the grounds served on the petitioner is vague jeopardising his right guaranteed under Article 22(5) of the Constitution to make a representation against the same. I am also of the view that those grounds are relevant and germane to the question of maintenance of public order, and it cannot be urged that there is no nexus between the charges levelled against the petitioner and the satisfaction of the detaining authority that the petitioner be detained in order to prevent him from acting in any manner prejudicial to the maintenance of public order.

32. No doubt, the Court must be jealous to protect the personal freedom of a citizen against arbitrary or unconstitutional invasions by the executive authorities; but, at the same time, it has to withhold its hands where the executive authorities have acted within their jurisdiction, keeping in view the interest of the community in general.

33. In the result, the writ application is dismissed.

Mukharji, J.--I agree that the writ application should be dismissed. I wish to make some observations with regard to some points raised in this case.

34. The main ground of attack against the order of detention is that the grounds of detention communicated to the petitioner are vague, and, as such, the

detention should be held illegal, because the constitutional safeguard provided under Article 22(5) of the Constitution of India has not been fulfilled in this case. Article 22(5) lays down that a person who is detained in pursuance of an order made under any law providing preventive detention should be furnished with the grounds of detention as soon as possible after he is detained to enable him to file a representation to the proper authority. Mr. Thakur Prasad, learned counsel appearing on behalf of the petitioner, contends that each of the grounds communicated to the petitioner is vague and it is not possible for the petitioner to make a proper representation against his order of detention, thus violating the fundamental safeguards guaranteed under Article 22(5) of the Constitution. In support of this contention, reliance was placed on the case of (1) Dr. Ram Krishna Bhardwaj V. State of Delhi.

35. On the other hand, the learned Advocate General, appearing on behalf of the State, contends that the grounds supplied to the petitioner are not at all vague and it was possible for the petitioner to make a proper representation against his detention before the authorities concerned. His contention is that the obligation of the State to furnish grounds of detention does not mean that the ground should contain meticulous details. In support of this contention, reliance has been placed on the case of (23) Thakur Prasad Bania V. State of Bihar. I agree with the contention of the learned Advocate-General that Article 22(5) requires the State Government to furnish grounds of detention to the petitioner, and not detailed facts of the case on which the order of detention is based. The grounds of detention should contain such abstract of facts which are sufficiently intelligible to the detenu on the basis of which he can file a representation to the authority concerned.

36. The grounds which have been served on the petitioner have already been indicated in paragraph 3 of the judgment of my learned brother. It is necessary to take up the grounds furnished to the petitioner in this case and to find out whether they are vague and unintelligible, or whether it was possible for the petitioner to make a proper representation. So far as the first ground is concerned, the allegation is that this petitioner, in his capacity as Secretary of All India Vidyarthi Parishad, attended meetings of Bihar Rajya Chhatra Neta Sammelan on 17th/18th February, 1974 where it was decided at his instance to start Gujrat type agitation in Bihar and it was also decided to resort to hunger strike and gherao of the offices of the Chief Minister, Bihar, the District Magistrate and other officers. It is urged on behalf of the petitioner that this ground does not disclose as to what is meant by Gujrat type agitation and that it is not possible to make any representation on such vague allegation. The petitioner admits in this application that he is the Secretary of All India Vidyarthi Parishad and that he has been a good student all his career and in this circumstance it is difficult to imagine that he would not know what was Gujrat type agitation. It is a common knowledge as to what had happened in Gujrat a few months ago and it is well known that large scale violence and arson were indulged in Gujrat. In this circumstance, it is difficult to accept the contention urged on behalf of the

petitioner that he would not know what was Gujrat type agitation when he is the Secretary of All India Vidyarthi Parishad.

37. It was further urged on behalf of the petitioner that the above ground did not also disclose as to what was urged or spoken by the petitioner in the said meetings. It is not necessary to mention in the grounds as to what was urged or spoken by the petitioner because that would amount to giving details of the facts constituting the grounds. It is enough for the detaining authority to mention in the ground that the decisions taken in the meetings were taken at the instance of the petitioner. It was further contended that there is nothing in this ground to suggest that the petitioner advocated a course of action which would lead to violence necessitating action being taken for maintenance of public order. There does not appear to be any merit in this contention. The very expression "Gujrat type agitation" used in this ground is suggestive of, and associated with, violence. The expression "agitation", according to the Concise Oxford Dictionary, is "commotion, disturbance, keeping of a matter constantly before the public". My learned brother has already observed that the meaning of expression "agitation", according to the Chambers' Twentieth Century Dictionary, means "to stir violently". Since violence was associated with the agitation made in Gujrat, Gujrat-type agitation clearly refers to that type of violence which erupted out of an agitation in Gujrat.

38. Further, there is also allegation that the decision was also taken in those meetings to resort to hunger strike and gherao. The expression "hunger strike" may not be associated with violence, but the expression "gherao" may be accompanied with violence. The expression "gherao" has been sought to be defined in the case of Jay Engineering Works Ltd. already referred to in the judgment of my learned brother; and according to their Lordships of the Calcutta High Court, this expression is invariably accompanied with wrongful restraint or wrongful confinement at times associated with cruel and inhuman treatment. Even if there is simple gherao of the offices of the Government officials, without any attempt at violence against them, that will clearly create problems of maintenance of public order as all Government officers will be prevented from doing their respective duties and the work of the Government offices will be paralysed, law and order problems cannot be controlled on account of gherao and the general current of life of the people at large would be affected. Such large scale gheraos would have the effect of paralysing the entire administration and hampering the normal life of the society. It has been held in (5) Ram Manohar Lohia's case referred to above that by maintenance of public order is meant prevention of disorder of a grave nature--a disorder which the authorities thought was necessary to prevent in view of the emergent situation. Such type of gheraos would cause some scare amongst the members of the public and is bound to affect the even tempo of the life of the community in the locality.

39. In ground no. 2, there is the allegation that it was decided on the 1st March, 1974 to form a Sanchalan Samiti for conducting the students' agitation and this

petitioner readily accepted to be a member of the Sanchalan Samiti. This ground had also reference to ground no. 1 where it was decided to start Gujrat type agitation, and in ground no. 2 it alleged that ways and means were thought out to implement the said students' agitation. In ground no. 3 there is a similar allegation that this petitioner was instrumental in forcing decision to gherao the Assembly on the 18th March, 1974 and to prevent the Government from addressing the Assembly. This ground was in accordance with the students' agitation to paralyse the Government. In ground no. 4, the petitioner is alleged to have attended the meeting of the Bihar Rajya Chatra Sanghars Samiti in which it was decided to gherao the Assembly. In ground on. 5, it is asserted that this petitioner was actually leading and participating in the gherao of the Assembly on the 18th March, 1974. This ground is also in keeping with the students' agitation of restraining the Government from functioning and paralysing the same. In second ground no. 5, it is asserted that even after the 18th March, 1974, this petitioner was guiding students' agitation and exhorted the students on the 8th April, 1974 to paralyse the functioning of the Government offices by resorting to gherao and dharna. In ground no. 6, it is asserted that, in conformity with the decision taken on the 8th April, 1974, this petitioner led a demonstration of students, in defence of prohibitory order, to gherao the Government offices. It is urged that breach of an order u/s 144 of the Code of Criminal Procedure is punishable u/s 188 of the Indian Penal Code, and so it cannot be a ground of detention of the petitioner. Merely because the jurisdiction of a tribunal or Court can be validly invoked for breach of an order u/s 144, it does, by itself, exclude the jurisdiction of the District Magistrate to proceed under any law enacted for preventive detention. If an authority is needed for this proposition, reference may be made to the case of (21) Masood Alam V. Union of India.

40. A common ground of attack has been made against all these grounds communicated to the petitioner is that these grounds are vague as it is not indicated therein the part played by the petitioner in any of these meetings. It was not necessary to incorporate in these grounds as to what exact part the petitioner took in these meetings and what expressions were uttered by him during the course of these meetings. These will be details of fact on the basis of which the conclusion is made. The law does not enjoin that the grounds of detention furnished to the detinue should be exhaustive. The law simply requires that the ground should contain such recitals which are easily understandable to the detinue and which are sufficiently definite to furnish materials to enable the detinue to make an effective representation to the authorities concerned against his detention. I have carefully perused all the grounds communicated to the petitioner and all these grounds relate to the students' agitation leading to gherao and paralysing the functioning of the Government. None of the grounds furnished can be said to be vague and it is not possible to hold that the petitioner is unable to make a proper representation to the authority concerned against his detention. My learned brother has also dealt with the question about the relevancy of the grounds to the maintenance of public order and I agree that all

these grounds are germane to the question of maintenance of public order. I cannot usefully add anything on this point.