
(1965) 02 AHC CK 0043

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 317 of 1965

Ram Newaz Alias Beta

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-02-1965

Acts Referred:

Citation : (1965) 02 AHC CK 0043

Hon'ble Judges : S.K. Verma, J;B.D. Gupta, J

Bench : Division Bench

Advocate : S.C Khare, V.N. Khare, V.K.S. Chaudhary and Polok Basu, for the Appellant;

Final Decision : Allowed

Judgement

Verma, J.—Ram Newaz alias Beta has filed this petition u/s 491 of Code of Criminal Procedure and Article 226 of the Constitution of India.

2. The Petitioner is a resident of Rukma Khurd Mazra Gautampur, Police Station Kotwali, Karvi, district Banda. Admittedly, he is connected with the business of the manufacture of Biri. According to the Petitioner, he is a contractor but, according to the State, he is only an employee of a firm which manufactures Biri. On the 5th of January, 1965 at 2 P.M. the Petitioner was arrested by the police at Banda Railway Station by the order of the District Magistrate of Banda which purported to be u/s 3(1) (a) (ii) of the Preventive Detention Act, 1900. On the 8th of January 1965 the grounds of his detention were furnished to him. In order to appreciate the points that arise for determination in this petition we consider it necessary to reproduce all the grounds verbatim. They are as follows:

1.-- That on 13.12.1959 Babu Lal S/o. Garib Das Jaiswal R/o. Kasba Manikpur, P.S. Manikpur, reported that you had threatened him with dire consequences and a report u/s 506 IPC was lodged to this effect. Another report against you was lodged by Mst. Munnia widow of Hira Lal R/o. Patha, P.S. Manikpur, on 3.3.60 u/s 506/504 IPC that you had threatened her. On 30.7.60 you threatened Ram Asrey

alias Guni S/o Ram Chandra Brahmin R/o village Tikari H/o Semardaha, P.S. Kotwali Karvi, Banda, and a report u/s 506 IPC was lodged against you. On 3.9.60 one Naib Husain alias Nathoo S/o Kaim Uddin R/o village Sutar Khana old Karvi lodged a report against you u/s 504/506 IPC. On 23.9.60 Sri Liaqat Husain S/o Ata Husain R/o village Ram Nagar, at present residing in Karvi lodged a report u/s 504/506 IPG against you.

2. That you on 30.3.62 at Railway Station Bahalpurwa Central Railway attempted to commit the murder of Sri Ranjit Singh Bhandari Inspector G.R.P. and his party and used firearms along with your gang of bad characters and were prosecuted for the said offence.

3. That on 10.2.63 in Purwa Gada Khan R/o village Chandra Mara within the jurisdiction of P.S. Manikpur, you forcibly wanted to take Begar from one Lotan of the locality and on refusal by Jagdeo, his uncle, you along with other associates while being armed with fire arms fired at Jagdeo and his nephew Lotan in order to commit their murder.

4. That on 4.9.63 you beat Kalloo S/o Chhedi, R/o Gola Bazar, Purani Karvi, P.S. Karvi, on his refusal to go to Bahalpurwa with you.

5. That on 4.11.63 in village Sichari P.S. Manikpur you along with others forcibly kidnapped Aliva Kol at the point of fire-arms with intention to keep him in secret confinement.

6. That on 22.2.64 you along with Ram Lai and others beat Sri Mool Chand Shukla, Principal of a college of Manikpur. The Principal ran inside the room of Petrol Tank for safety, but you entered inside the room and beat him there too.

7. That on 26.11.64 you went to the house of Sri Kashi Prasad Chaurasia member of Nagarpalika Chitrakoot where you met his father and on his inability to produce Sri Kashi Prasad then and there, you left threatening him that he would get the dead body of his son Kashi Prasad "on 1.12.64 in case Kashi Prasad is not produced before you.

8. That on 30.11.64 you forcibly put a garland of shoes on the neck of Kashi Prasad at his house with a view to insult and disgrace him.

9. That on 23.12.64 you got the shop of Sri Jamuna Prasad forcibly closed and threatened that if he does not turn out Sri Kashi Prasad from his house, he would turn him out of the village and Kashi Prasad would be murdered.

10. That you were challaned u/s 110 Code of Criminal Procedure and 107/117 Code of Criminal Procedure but you terrorised the witnesses so much that none could case to depose against you.

11. That regular complaints are being made verbally to all authorities against you as the people have become so scared that they will not complain in writing against you.

12. That your associates are all of ill-repute and have terrorised the people with your backing. Some of your associates like Shyama, Radhey, Jagdamba and Dadu are history sheeters and previous convicts.

13. That you have been from time to time proceeded against under the preventive sections like 107/117 Code of Criminal Procedure and 110 Code of Criminal Procedure which shows that there has always been a danger from you for breach of peace.

You by such action of yours are constantly terrorising the public of Karwi, Manikpur and suburbs and thereby want to establish a reign of terror in these localities which is highly prejudicial to the maintenance of the public peace and public order.

3. Learned Counsel for the Petitioner has challenged the legality of the Petitioner's detention mainly on two grounds. His first contention is that some of the grounds are wholly irrelevant and some others are too vague. With regard to the first contention he has referred us to grounds Nos. 2,3 and 13 first paragraph. As regards ground No. 2, the Petitioner along with some others was prosecuted for an offence punishable u/s 307 of the IPC. He was tried by Sri Ram Autar Rastogi, the learned Temporary Sessions Judge of Banda, who by his judgment dated the 31st of July, 1964 not only acquitted the Petitioner and his companions but also passed strictures against the prosecuting agency. He observed in his judgment as follows:

The oral evidence on behalf of the prosecution has been considered closely. The short comings, discrepancies, absurdities and incongruities in that evidence have also been pointed out during that discussion. I need not repeat them over again. It is difficult on that evidence even to accept that any encounter as alleged took place between the police party and the bad mashas at the alleged date, time and place, and much more to accept that the accused persons standing trial took part in that encounter.

A word also need be said regarding the investigation of the case. The investigation of the case lack much in straight forwardness. It is all fabricated and more farcical and superficial than real.

4. Towards the end of his judgment the learned Sessions Judge made the following observations:

It would thus be seen that there is entirely nothing in the case to earn the confidence of the court and to make the prosecution story every bit of which prominently lacks in reality and actually acceptable even in the remotest manner. I feel painfully constrained to observe that the instant case furnishes a glaring instance of concerted highhandedness of the police of Manikpur G.R.P. station and civil police of Karwi.

There is no escape from the conclusion that the whole case is false and fabricated and all the accused persons should be held not guilty of the offences

charged and should be acquitted thereof.

5. With regard to the allegations contained in ground No. 3, the Petitioner and one other person were prosecuted Under Sections 148 and 307 of the IPC, Sri Tej Pal Singh, the learned Sessions Judge of Banda, acquitted them on the 29th of November, 1963.

6. With regard to the allegations contained in ground No. 13 first paragraph, proceedings Under Sections 107/117 and 110 of the Code of Criminal Procedure were taken against the Petitioner. Sri N.G. Jain, Judicial Officer, Karwi, district Banda, by his judgment dated the 23rd of December 1963, discharged the notice issued against the Petitioner. In the course of his judgment the learned Magistrate observed as follows:

This ends the discussion of the evidence produced by the prosecution. The prosecution has not produced a single witness of the village of the O.P. or of a neighbouring village who might have come forward to depose against the O.P. The prosecution has miserably failed to substantiate its allegations against the O.P. It has not at all been proved that Beta is by habit a house breaker or a thief or that he is hazardous to the community or that he committed offences involving breach of peace.

Ram Sanehi, Gram Pradhan of village Karka Pandaria, DW 1, All Pd., Member AZP, Banda, DW 2, Ghura man, Gram Pradhan of village Kehu-nia, DW 3, Jagat Prasad, Gram Pradhan of village Hela, DW 4, Jamuna Prasad, Gram Pradhan of village Nagar and Shekhapur, DW 5, Narka, Gram Pradhan of village Rampur, DW 6, Hanuman Prasad, Gram Pradhan of village Barahmuafi, DW 7, Hira Lai, Member AZP, Banda, DW 8, Sri Ram Sanehi Bhartiya, President of Zila Parishad, Banda, D.W. 9, Sri Din Dayal Karwaria, MLA and an exhonorary Magistrate, DW 10, Hira Lai, Sarpanch of Nyaya Panchayat, Kalyanpur, DW 11, Gopal Krishna, Member Municipal Board, Karwi, DW 12, Sri Ambika Prasad, Member of MB Karwi, DW 13, Ghura man, Member, MB Karwi, DW 14, Debi Prasad, Member, MB Karwi, DW 15, Ram Khela-wan, Member, MB, Karwi, DW 16, Sri Jogendra Singh, Vakil and Pradhan of village Soh, DW 17, Sri Ghhotey Lai, a practising Vaid and a businessman, DW 18, Raja Dua, UP Pradhan of Gaon Sabha, Rukma, DW 19, Sri Narain Das, a Member of the Executive of PSP Banda, and an ex-member of Karwi Notified Area, Karwi, DW 20, Sri Raghunath Prasad, Member AZP, Banda, and Pradhan of Gram Sabha Khobi, DW 21, Indrajit, Gram Pradhan of village Chandra Mara, DW 22, Sooraj Pal, Gram Pradhan of village Bagrehi, DW 23, Girja Dutt, Gram Pradhan of village Rampur Tarauhan, DW 24 and Baboo Lal, Gram Pradhan of village Kothihai, DW 25. All deposed that Beta OP was personally known to them and that he was of good character and that they have never heard any complaint against him. It has also been proved that Beta is a businessman and takes Theka from Forest Department in respect of Tendu leaves etc. Very respectable persons of this District have been produced by the OP in his defence who have testified regarding his good character etc. The evidence of the defence witnesses cannot be assailed for any reason whatsoever. The evidence of

these 25 defence witnesses is further strengthened at least by 22 witnesses produced on behalf of the prosecution, viz. P Ws 18, 19, 20, 21, 36, 37, 39, 40, 50, 64, 65, 66, 69, 72, 73, 74, 76, 79, 82, 104, 105 and 117 who all deposed that Beta OP was of good character. I, therefore, accept the evidence of the defence witnesses in toto.

7. Towards the end of his judgment the learned Judicial Officer said this:

In fact I am of opinion that Beta should never have been prosecuted in this case u/s 110 of the Code of Criminal Procedure. His prosecution in this case itself can be called as rash and uncalled for. There has been unnecessary waste of public money and time in this reckless prosecution. From the evidence before me it has been positively proved that Beta OP is of good character and is not at all hazardous to the community and does not habitually take any part in the commission of offences involving breach of peace. To call him as a thief or a home breaker is most absurd and shows bankruptcy of brain.

8. Learned Counsel for the Petitioner has contended that when once the Petitioner has been prosecuted on certain allegations and he has been acquitted because the evidence was found to be thoroughly unreliable, neither the same facts nor the evidence in support of those facts could be called in aid by the State for detaining him under the Preventive Detention Act. He has cited authorities in support of his contention:

9. In *Manipur Administration Vs. Thokchom, Bira Singh*, their Lordships of the Supreme Court observed as follows:

The question raised for decision in *Pritam Singh's* case, AIR 1956 SG 415, however, was different and was whether where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or *res judicata* against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2) * * *

As we have pointed out earlier, issue estoppel does not prevent the trial of any offence as does *autrefois acquit* but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction. * * *

As we have pointed out, we are not now concerned with any extension of the principle of *autrefois acquit* but as to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court at a previous trial.

Learned Counsel has also relied upon two Australian decisions: *The King v. Wilkes* (2) (77 CLR 511) and *Mraz v. The Queen* (3) (96 CLR 62). In the former

case Dixon, J. observed as follows:

Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner. That seems to be implied in the language used by Wright, J. in *R. v. Ollis* which in effect I have adopted in the foregoing statement. Such a question must rarely arise because the conditions can seldom be fulfilled which are necessary before an issue estoppel in favour of a prisoner and against the Crown can occur. There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see no reason why the ordinary rules of issue estoppel should not apply. Such rules are not to be confused with those of *res judicata*, which in criminal proceedings are expressed in the pleas of *autrefois acquit* and *autrefois convict*. They are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. Issue estoppel is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well known doctrines which control the re-litigation of issues which are settled by prior litigation.

10. In the latter Australian decision a Full Bench of five judges observed as follows:

The law which gives effect to issue estoppel is not concerned with the correctness or incorrectness of the finding which amounts to an estoppel, still less with the processes of reasoning by which the finding was reached in fact; it does not matter that the finding may be thought to be due to the jury having been put upon the wrong track by some direction of the presiding Judge or to the jury having got on the wrong track unaided. It is enough that an issue or issues have been distinctly raised and found. Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding may be made by one of them against the other.

11. Their Lordships of the Supreme Court have cited these two Australian decisions with approval.

12. In *Halsbury's Laws of England*, Lord Simonds' (Third) Edition, Vol. 15, para. 355 we find the following:-

355. Estoppel and *res judicata*. The most usual manner in which questions of estoppel have arisen on judgments *inter partes* has been where the Defendant in an action raised a defence of *res judicata*, which he could do where former

proceedings for the same cause of action by the same Plaintiff had resulted in the Defendant's favour, by pleading the former judgment by way of estoppel. In order to support that defence it was necessary to show that the subject matter in dispute was the same (that is to say, that everything that was in controversy in the second suit as the foundation of the claim for relief was also in controversy or open to controversy in the first suit), that it came in question before a court of competent jurisdiction, and that the result was conclusive so as to bind every other court.

If, however, a matter in issue is determined with certainty by the judgment, an estoppel may arise where a plea of *res judicata* could never be established, as where the same cause of action has never been put in suit. A party is precluded from contending the contrary of any precise point which, having been once distinctly put in issue, has been solemnly found against him. Though the objects of the first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action is conclusive in a second action between the same parties and their privies. This principle applies, whether the point involved in the earlier decision, and as to which the parties are stopped, is one of fact, or one of law, or one of mixed law and fact.

The contention of the learned Counsel for the Petitioner is not that the action of the District Magistrate in detaining the Petitioner under the Preventive Detention Act is barred by the principles of *res judicata*. He has stated that it is not necessary for him to go to that length. He has argued that neither the findings recorded in the previous cases nor the evidence led in support of the allegations upon which those findings were given could be taken as grounds for the Petitioner's detention. We are of the view that the contention of the learned Counsel for the Petitioner, supported as it is by High authority, must be upheld. Grounds Nos. 2, 3 and first part of No. 13 are, in our view, wholly irrelevant.

13. The next point that arises for consideration is: What is the effect of the irrelevancy of the three grounds just mentioned above ? If the District Magistrate takes action upon a number of grounds and some of them are found to be irrelevant, it is difficult to say to what extent his mind was influenced by those grounds. In *Shibban Lal Saxena, Petitioner v. State of Uttar Pradesh and others Respondents* (4) (All 1954 SC 179) their Lordships of the Supreme Court observed as follows:

The first contention raised by the learned Counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this Court that the power to issue a detention order u/s 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of "*malafides*" vide *The State of Bombay Vs. Atma Ram Sridhar Vaidya*, . A Court of law is not

even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu u/s 7 of the Act. What has happened, however, in this case is somewhat peculiar.

The Government itself in its communication dated the 13th of March 1953 has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or nonexistent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made u/s 3(1) (a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the Petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made.

To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole

In *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, their Lordships of the Supreme Court, after referring to a number of decisions, observed as follows:

The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them, are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be nonexistent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority.

We are of the view that the order of detention is vitiated because some of the grounds mentioned above are wholly irrelevant.

14. Coming now to the second contention of the learned Counsel for the Petitioner, we have been referred to grounds Nos. 11, 12 and the second paragraph of ground No. 13. There cannot be the slightest doubt that these grounds are much too vague. Who made the complaints, to whom the complaints were made and what the nature of the complaints was are not mentioned in

ground No. 11 at all. How could the Petitioner make any effective representation on such vague allegations ? Grounds Nos. 12 and second paragraph of No. 13 suffer from the same defect. We are of the view that if some of the grounds are too vague the entire order is vitiated, as in the case of irrelevancy of, certain grounds. We are fortified in this view by the decision of their Lordships of the Supreme Court in *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, . In this case 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 Article 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, subject of course to a claim of privilege Under Clause (6) of Article 22. That not having been done in regard to the ground mentioned in sub para, (e) of para. 2 of the statement of grounds, the Petitioner's detention cannot be held to be in accordance with the procedure established by law within the meaning of Article 21.

In our opinion, the order of detention passed against the Petitioner is bad on this ground as well.

15. Although learned Counsel for the Petitioner invited attention only to the grounds mentioned above, we have scrutinized each one of them with care. Most of there vaguely allege that the Petitioner assaulted or threatened persons so that reports against him were made by certain individuals Under Sections 504 and 506 of the IPC. Whether any action was taken on the complaints and the reports made is not mentioned in the grounds. In our opinions the law of Preventive Detention was not meant for punishing persons who could not be brought to book under the ordinary Criminal law of the land. The authorities cannot be permitted to take re-course to the law of Preventive Detention because they have failed to secure a conviction under the ordinary criminal law. If we were to take a different view it would create a situation which would be extremely dangerous to individual liberty. If the police are displeased with a particular individual all that they have to do is to start a number of cases against him, and if they fail for want of evidence, he can be locked up under the Preventive Detention Act and those very facts which formed the subject matter of his prosecution could be called in aid for detaining him. The law of Preventive Detention was not enacted to deal with the habitual criminal. In this connection we should like to refer to two decisions--one of the Punjab High Court and the other of the Patna High Court. In *Ravinder Kumar Sardari Lal Vs. District Magistrate, Delhi*, Grover, J. observed as follows:

Merely because a person is a dangerous character or is breaking the law in one

manner or the other it does not, mean that the maintenance of public order is being threatened unless the activities are of such a nature and the situation prevailing in a particular part of the country is such that if he is not detained the maintenance of public order cannot be maintained or it would be endangered. If the local police is helpless in securing conviction successfully with regard to a person who is committing thefts and indulging in gambling, drinking, assaults etc., it does not mean that resort can be had to the provisions of the Preventive Detention Act in normal conditions unless some special circumstances exist which would show that the maintenance of tranquillity in the community would be prejudiced or endangered unless that person is detained.

Grover, J. relied upon the following observations of Patanjali Sastri, J. in *Romesh Thappar Vs. The State of Madras*, :

The Constitution thus requires a line to be drawn in the held of public order or tranquillity making off, more or less roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance treating for this purpose differences in degree, as if they were differences in kind.

In *Lalu Gope Vs. The King*, Shearer, J. observed as follows:

The question that arises is, therefore, whether the Legislature has empowered the executive to order the detention of a habitual criminal of this type on the ground that he is a habitual criminal and on no other ground. The law recognises, and has always recognised that for the protection of the public it may be necessary to deprive habitual criminals temporarily of their liberty. The main provisions in the existing criminal law are to be found in Ch. 8, Code of Criminal Procedure when, hitherto, the Crown has sought to deprive a man of his personal liberty on the ground that he is a habitual criminal, it has been incumbent on it to bring him before a Court of law and to prove that he is in fact a habitual criminal of a certain type or that he is of criminal habits and that his remaining at large is "hazardous to the community." Moreover, even when the Grown has succeeded in establishing its case against him the man is not to be deprived of his liberty if he is in a position to furnish security for his good behaviour to the satisfaction of the Court. And against the order of the Court, either an order demanding security or an order refusing to accept such security as is offered, there is a right of appeal. Has the Legislature swept away every one of these safeguards ? Is a man, on the ground that he is believed to be a habitual criminal, to be deprived of his liberty on the fiat of a Minister of the Crown, granted, presumably, on the advise of a civil servant who has before him nothing but the reports of subordinate police officers and such submission in writing as the man him self may be able to make ? If the Legislature had intended to put into the hands of the police an additional weapon to enable them to deal with ordinary crime, if it had intended to leave it at the option of the police, either to bring a man, who, they were satisfied, was a habitual criminal, before the

Courts, or to obtain from a Minister an order of preventive detention, one would expect it to have made its intention clear by using the most plain and unequivocal language. This, however, it quite certainly, has not done. The act in which the provision, 6n which reliance is placed, occurs is not an Act for the preventive detention of habitual criminals. In fact, the expression "habitual criminals" is nowhere to be found in it; it is an Act for the preservation of public order. With that Object it enables the Provincial Government to control processions and public meetings, to impose censorship, to prevent unlawful drilling and the wearing in public of uniforms. The provisions enabling the Provincial Government to make orders of preventive detention must be read in the light of these other provisions in the Act. Prima facie the persons against whom orders of detention were authorised to be made were persons engaged in activities which were likely to lead to public disorder or domestic violence.

The order which has been made against the Petitioner has been made with a view to preventing him from committing theft in running goods trains. That is, clearly, not an act prejudicial to the maintenance of public order." This decision was in a case where the Petitioner had been detained under the Bihar Maintenance of Public Order Act 1947. The reasons given by Shearer, J., however, are equally applicable to the facts of the present petition. There may be circumstances such as communal disturbances and riots in which the detention of a notorious goonda may be justified. The justification, however, would not be the fact of his being a notorious goonda but the existence of circumstances making his detention imperative in the interest of public order. In the present case, there are no special circumstances whatsoever, even if it be assumed that the Petitioner is a bad character.

16. Learned Counsel who appeared for the State could not answer any one of the points raised by the learned Counsel for the Petitioner. Towards the end of the day yesterday he took time to cite authorities but it has been stated on his behalf today that he could find none.

17. The result is that we allow this petition and direct that the Petitioner be set at liberty forthwith. Considering the circumstances of the case, we are of the opinion that the Petitioner is also entitled to costs which we assess at two hundred and fifty rupees (Rs. 250/-)