
(1985) 04 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 423 of 1984. (Bom. Appellate Side)

Shahaji Vishnu Lokhande

APPELLANT

Vs

M.P. Mirgali

RESPONDENT

Date of Decision : 24-04-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 21, 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 149, 151

Citation : (1986) 88 BOMLR 114

Hon'ble Judges : C.S. Dharmadhikari, J;A.D. Tated, J

Bench : Division Bench

Judgement

C.S. Dharmadhikari, J.—This writ petition is filed by the petitioners who were detained u/s 151 of the Code of Criminal Procedure as amended by Maharashtra Act No. VII of 1981.

2. According to the petitioners, they are active and whole-time members of an All India organisation known as "Chhatra Yuva Sangharsha Vahini" (hereinafter referred to- as "Vahini"}, a social action group. This organisation was formed with a view to inculcating the spirit of freedom and selfless service among the weaker sections of the people and bringing about a total revolution in the society by peaceful and non-violent means as envisaged by Mahatma Gandhi. Consistent with their objectives, the Vahini started a number of units in the rural areas. One of such units has been functioning since about 1977 at Mhaswad in Man Taluka of Satara District. Man Taluka is a dry area with minimum rainfall, nearly 70 per cent of the population being of land-Jess labourers. In view of the large scale under-employment and unemployment in the area, the benevolent scheme of employment guarantee is of importance. However, due to apathy and corruption amongst the officers operating the scheme, the same was not functioning effectively in the Man Taluka. Therefore, the members of the Vahini started organising landless labourers to make them conscious of their rights under the scheme. To achieve their object and for drawing the attention of the officers concerned, the Vahini is-required at times to organise peaceful morchas and/or

dharnas and to resort to peaceful Satyagraha. According to the petitioners, these activities of the Vahini and of the landless labourers are looked upon as an affront by two officers concerned. Therefore, a modus operandi was employed by lodging number of false criminal cases against them. The latest instrument of oppression and harassment of the workers of the Vahini has been illegal arrests u/s 151 of the Code of Criminal Procedure as amended by the Maharashtra Act.

3. According to the petitioners, due to acute shortage of rainfall in Man Taluka in the year 1984, a pressing need for employment under the Employment Guarantee Scheme was felt. On account of failure of the authorities to provide such employment, there has been a good deal of discontent amongst the landless labourers in the area. The people, therefore, started staging demonstrations and peaceful protests. One such demonstration was Rasta Roko Andolan resorted to by the people on July 1, 1984 in Man Taluka. On July 2, 1984 the people themselves voluntarily removed the obstructions from the roads. On July 3, 1984 a procession was taken out and a public meeting was also held. Immediately thereafter the local police started arresting the active workers of the Vahini and labourers, including women who were demanding work, u/s 151 of the Code of Criminal Procedure. For this purposes, a list was prepared by the police of about 40 persons including the members of the Vahini. The police arrested 28 such persons, including five women labourers under the said provision.

4. Respondent No. 2 - the Sub-Inspector of Police, Mhaswad - arrested petitioner No. 1 Shahaji Lokhande on July 11, 1984, produced him before the Magistrate on July 12, 1984 and obtained remand for a period of seven days till July 19, 1984 u/s 151(3). On July 19, 1984 a further remand was asked for and till July 26, 1984 remand was granted by the Judicial Magistrate. Similar orders were obtained qua other workers also. It is these orders of arrests and of remand granted by the Judicial Magistrate which are challenged in this writ petition on various grounds.

5. It is not disputed by the respondents that the petitioners and other workers were arrested u/s 151 of the Code of Criminal Procedure and thereafter remands were sought from the Judicial Magistrate. However, the respondents have denied the adverse allegations made against them in the affidavits filed in reply. According to the respondents, the activities of the petitioners were not peaceful. The workers of Vahini, including the petitioners, adopted illegal methods and started instigating people. They had given an open challenge to the Government that they would stage Andolan from July 3, 1984. They had also given challenge to the very existence of the Government and its administration. Because of the activities of the petitioners and their associates, it became difficult for the police to maintain law and, order and, therefore, action u/s 151(3) was required to be taken against them.

6. In this writ petition, apart from the challenge to the orders passed, the very provisions of Section 151(3) as amended by Act No. VII of 1981 are challenged

on the ground that they are ultra vires of the provisions of Articles 14, 21 and 22 of the Constitution of India, Shri Rane, the learned Counsel appearing for the petitioners, contended that Act No. VII of 1981 known as "The Maharashtra Prevention of Communal, Anti-social and other Dangerous Activities Act, 1980" is an Act enacted for the purposes of preventive detention. By Section 18 of the said Act the legislature has also amended Section 151 of the Code of Criminal Procedure. The said Act is enacted for preventively detaining persons from acting in any manner prejudicial to the maintenance of public order. Sub-section (3) of Section 151 of the Code as amended by the said Act has nothing to do with punitive detention or detention for the purposes of investigation of the offences. In substance, all the provisions of preventive detention are incorporated in one section viz. Sub-section (3) of Section 151, which is wholly outside the scope of Articles 21 and 22 of the Constitution of India. The said section is also ultra vires Article 14 as it confers an unbridled and arbitrary power upon the Magistrate to grant remands. The powers conferred are undefined and arbitrary. No guidelines have been laid down in that behalf, nor has it any nexus with the object of the Act. The said provision is also contrary to Article 21(5) of the Constitution of India. It does not confer any right upon the detenu to make a representation to the detaining authority itself, nor is there any provision in the Act for supplying grounds of detention to the detenu. In the whole enactment no provision is made regarding the conditions of detention. It is nowhere laid down as to how, where and subject to what conditions the detenu is to be detained. Since the law does not provide as to how the detention is to be governed, the law is wholly unconstitutional. According to Shri Rane, assuming that Section 18 of Act No. VII of 1981 is independent of the provisions of the Maharashtra Prevention of Communal, Anti-Social and other Dangerous Activities Act, 1980 and the legislature has only chosen it as an occasion to amend Section 151 of the Code of Criminal Procedure, still it will not cease to be a provision for preventive detention. If the law is for preventive detention, then it will not cease to be so only because it is enacted by amendment to the Criminal Procedure Code or because the power to continue the detention is conferred upon the Judicial Magistrate and not on the Executive authority. Preventive detention is a term recognised by the Constitution by Article 22 and Entry 3 of List III of the Seventh Schedule. It is not a punitive detention, nor a pre-conviction detention nor a detention under Chapter VIII. It is nothing, but a preventive detention in law. Such a detention is contemplated for preventively detaining a person whose activities are likely to be prejudicial to the maintenance of public order. No remedy by way of an appeal or revision to higher authority is provided. It is nowhere stated as to whether the detenu will be entitled to take the assistance of a lawyer or a lawyer will be entitled to appear before the Judicial Magistrate or the Sessions Court. It does not lay down as to how and within how much period a reference made to the Sessions Court should be decided. No obligation is cast upon the Magistrate to communicate the grounds etc, or to supply the copy of the order. In these circumstances, it is quite obvious that the procedure prescribed is most unjust, unfair and unreasonable. This is not the end of the

matter. No provision is made for governing the conditions of detention and on that count also the whole provision is bad in law. In substance, it was contended by Shri Rane that by inserting Sub-section (3) in Section 151 of the Code of Criminal Procedure, the legislature has enacted one section law of preventive detention which is wholly impermissible.

7. So far as the challenge on merits is concerned, it is contended by Shri Rane that the detention of the petitioners and other workers of the Vahini was not only uncalled for, but is a patent instance of mala fide and colourable exercise of the power on the part of the police authorities. The Judicial Magistrate has mechanically exercised the power and has granted the remand without any application of mind and, therefore, the said orders are liable to be quashed. It was also contended by Shri Rane that the orders passed being patently illegal and mala fide, the petitioners are entitled to monetary compensation for their illegal detention. In support of this contention he has placed strong, reliance upon the decision of the Supreme Court in Rudul Sah Vs. State of Bihar and Another, In support of his other contentions, Shri Rane has placed strong reliance upon the decisions of the Supreme Court in Francis Coralie Mullin v. The Administrator, Union Territory of Delhi AIR [1981] S.C. 746 , A.K. Roy and Others Vs. Union of India (UOI) and Others, as well as Shri. Lallubhai Jogibhai Patel Vs. Union of India (UOI) and Others,

8. On the other hand, it is contended by Shri Page and Shri Barday, the learned Public Prosecutors appearing for the respondents, that action was taken by the concerned police authorities within the four corners of Sub-section (5) of Section 151 of the Code of Criminal Procedure. So far as the vires of the section is concerned, it is contended by the respondents that the legislature has enacted the said provision by exercising its legislative power under Entry 2 of List III of the Seventh Schedule. For this amendment, the assent of the President is also received. Therefore, the amendment made to the Code was well within the competence of the State legislature. It is not correct to say that unbridled, unchannalised or arbitrary powers have been conferred upon the Judicial Magistrate for granting remand. Sufficient guidelines have been laid down in the provision itself. The fact that while passing orders u/s 151(3) the Judicial Officer has to base his order on reasonable grounds and after passing the order has to supply the copy of it to the person arrested along with grounds therefore, is clearly indicative of the fact that the order contemplated is a judicial order. The provisions further make it clear that the order of remand under the amended section could be granted if the Judicial Magistrate is satisfied that the activities of the person being at large are likely to be prejudicial to the maintenance of the public order. Such a remand can be for a maximum period of 30 days. The Magistrate is obliged to communicate the grounds on which the order has been made to the person concerned as soon as may be. The person concerned has also a right to make a representation against the said order to the Sessions Court. Therefore, there are in-built limitations on exercise of the power and guidelines are also laid down in that behalf. Further, the power conferred is not of

preventive detention nor the detention contemplated is punitive. Chapter XI of the Code deals with preventive action of the police. The arrest contemplated by Section 151 is to prevent the commission of cognizable offences. Therefore, it cannot be said that the action contemplated is of preventive detention as understood by Articles 21 and 22 or Entry 3 of List III of the Seventh Schedule. So far as the conditions of detention are concerned, it is true that no separate rules laying down the conditions of the custody are laid down in the amended provision. However, usual rules in regard to regulating the conditions qua -the persons in custody are applicable to the person so arrested u/s 151 of the Code of Criminal Procedure. It is agreed on both the sides that the person so arrested is not treated as an under-trial prisoner. In this view of the matter, according to the respondents, the provisions of Section 151(J) are wholly constitutional and valid. So far as the merits of the orders are concerned, it was not possible for the learned Public Prosecutors to support the said orders.

9. Therefore, the main contention raised in this writ petition relates to the validity of the amended provision of Section 151 of the Code of Criminal Procedure as amended by Section 18 of Act No. VII of 1981. Section 151 of the Code of Criminal Procedure in its application to the State of Maharashtra came to be amended in the following terms: -

18. (a) in Sub-section (2), after the words "required or authorised" the words, brackets and figure "under Sub-section (3) or" shall be inserted,

(b) after Sub-section (2), the following sub-section shall be inserted, namely:

3)(a) Where a person is arrested under this section and the officer making the arrest, or the officer in charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than twenty-four hours from the time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary, by reason that-

(i) the person is likely to continue the design to commit, or is likely to commit the cognizable offence referred to in Sub-section (1) after his release; and

(ii) the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order, the officer making the arrest, or the officer in charge of the police station, shall produce such arrested person before the nearest Judicial Magistrate, together with a report in writing stating the reasons for the continued detention of such person for a period longer than twenty-four hours.

(b) Notwithstanding anything contained in this Code or any other law for the time being in force, where the Magistrate before whom such arrested person is produced is satisfied that there are reasonable grounds for the temporary detention of such person in custody beyond the period of twenty-four hours, he may, from time to time, by order remand such person to such custody as he may

think fit:

Provided that, no person shall be detained under this section for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person.

(c) When any person is remanded to custody under Clause (b), the Magistrate shall, as soon as may be, communicate to such person the grounds on which the order has been made and such person may make a representation against the order to the Court of Session. The Sessions Judge may, on receipt of such representation, after holding such inquiry as he deems fit, either reject the representation, or if he considers that further detention of the arrested person is not necessary, or that it is otherwise proper and just so to do, may vacate the order and the arrested person shall then be released forthwith.

It is quite clear from Section 1(0 of Act No. VII of 1981 that Sections 2 to 16 of the said Act had a limited operation. The said section reads as under:

1(4) Sections 2 to 16 of this Act shall, from the commencement of the National Security Ordinance, 1980, on the September 23, 1980, apply, and shall be deemed to have applied, only to the orders of detention made or deemed to have been made under this Act before the September 23, 1980.

Therefore, Section 18 of the Act by which Section 151 of the Code of Criminal Procedure came to be amended is wholly unconnected with the scheme of Act No. VII of 1981 viz. the Maharashtra Prevention of Communal, Anti-Social and other Dangerous - Activities Act, 1980. It appears that the legislature took an opportunity to amend Section 151 of the Code while enacting the said piece of legislation and nothing more. Only because Section 151 is amended by the said Act, it cannot be said that the amendment is any way illegal or ultra vires. Once it is held that by virtue of the powers vested in it by Entry 2 of List III of the Seventh Schedule the State legislature could have amended the Code of Criminal Procedure in its application to the State of Maharashtra and the said amendment received the assent of the President, then it cannot be said that the amendment was beyond the legislative competence of the State legislature. In all fairness, Shri Rane has not challenged the competence of the State legislature to amend the said provision of the Code. However, Shri Kane's main contention is that the said provision is one section law of preventive detention and is, therefore, ultra vires.

10. It is not possible for us to accept the said contention of Shri Rane. Section 151 of the Code is part of Chapter XI which deals with preventive action of the police. Section 149 lays down that every Police Officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence. The power to arrest is conferred by Section 151 to prevent the commission of cognizable offences. Such an arrest is neither punitive nor can it be equated with preventive detention. It is an arrest made to prevent the commission of cognizable offences. In support of his

contention, Shri Rane has placed reliance upon the decision of the Supreme Court in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (supra) wherein distinction between "punitive detention" and "preventive detention" is made clear. However, in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, , the Supreme Court has also recognised a third category of detention. The area and field covered by preventive detention and this category of detention are clearly different and distinct and cannot be confused with each other. Therefore, it will not be correct to say that an arrest to prevent the commission of a cognizable offence u/s 151 of the Code of Criminal Procedure, which is merely a preventive action of the police, will amount to preventive detention as understood by Article 22 or Entry 3 of List III of the Seventh Schedule.

11. So far as the challenge to the said provision based on Article 14 is concerned,, it is also not possible for us to accept the said contention of Shri Rane. In our view, the power conferred by Sub-section (3) of Section 151 is neither unbridled nor arbitrary. In *Balraj Madhok v. The Union of India* AIR [1967] Delhi 31, Hegde C.J. (as he then was) had an occasion to consider the scope of Section 151 of the Code, While analysing the said provision, it "was observed therein (at p. 32):

The power given under this provision impinges on one of the important liberties of an individual. Hence it is necessary that in exercise of that power, there should be strict compliance with the requirements of the law.... What is required u/s 151 of the Code is that the officer concerned must know that the person to be arrested is designing to commit a cognizable offence. An "apprehension" that he may commit an offence is not sufficient under that provision. Apprehension is not the same thing as knowledge, The former is a mere feeling. Latter is definite conclusion. Further, even mere knowledge that the person concerned would endanger peace or tranquility need not result in a cognizable offence, Again, the possibility of the commission of a cognizable offence does not mean that he is designing to commit such an offence. Lastly, it is not said that it appeared to the officer concerned that the commission of the offence could not be otherwise prevented-.

That was the position even when Sub-section (3) was not on the statute book. Therefore, even for arresting a person for a period of twenty four hours, the .section as it originally stood, provided enough guidelines. In Sub-section (3) as amended by Maharashtra Act, an obligation is cast upon the police officer making arrest to produce the person before the Judicial Magistrate if the detention of the arrested person for a period longer than 24 hours from the time of his arrest is necessary. Before such an application could be made to the Judicial Magistrate, the Police Officer must have reasonable grounds to believe. The expression ".reasonable grounds to believe" is a strong expression. It does not mean a purely subjective satisfaction on the part of the Police Officer. The belief must be held in good faith. It cannot be merely a pretence. To put it

differently, the reasons for the belief should have a rational connection or a relevant bearing to the formation of belief and should not be extraneous or irrelevant to the purpose of the section. Such a belief will have to be founded on reasonable grounds. Therefore, these grounds must exist in the record. The powers of the Judicial Magistrate to grant remand are also circumscribed by the provisions of Sub-section (3) itself. Initially it must be shown that the person is likely to continue the design to commit, or is likely to commit, the cognizable offence referred to in Sub-section (1) and that the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order. The expression "prejudicial to the maintenance of public order" has received a specific connotation. There is a distinction between "law and order" and "public order". These words are judicially interpreted. As to what is the distinction between "law and order" and "public order" is explained by the Supreme Court in various decisions. It will be enough if a reference is made to the latest decision of the Supreme Court in *Ajay Dixit Vs. State of U.P. and Others*, wherein earlier decisions are referred to and relied upon. It is well-settled that when the words and phrases previously interpreted by the Courts are used by the legislature in the later enactment, then in the absence of anything to the contrary, there is a presumption that the legislature intended to convey by their use the same meaning which the Court had already given to them. This presumption will be stronger where these words have received a settled meaning by series of decisions of the highest Court of the country. This is more so in view of Article 141 of the Constitution of India which lays down that the law declared by the Supreme Court is binding on everybody. Thus, the expressions used in Section 151(3) have a clear, definite and precise meaning and that the legislature must be taken to have intended that they should be understood in that sense only and no other. Therefore, it cannot be said that the expression used is in any way vague. Further, for passing an order of remand the Judicial Magistrate must be satisfied that the person is likely to continue the design to commit or is likely to commit, the cognizable offence referred to in Sub-section (1) after his release and that the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order. The word "and" is normally conjunctive. Thus, the conditions laid down in Sub-section (3)(a)(i) and (ii) must co-exist. Unless both these conditions are satisfied, the order of remand cannot be passed. Before passing the order of remand, strict compliance with the provisions of law is necessary. The mere possibility of committing a cognizable offence does not mean that the person is designing to commit the offence. The words used are "the design to commit" and "likely to commit" the cognizable offence. It is something more than mere possibility. The design should be qua the person who is sought to be arrested and not generally. As observed by the Orissa High Court in *Prahalad Panda Vs. Province of Orissa*, : -

It appears to me clear u/s 151 that a mere general information about the programme or tendency of the Communist Party to commit offence even if these

offences were cognizable is not enough to justify the invoking of the powers u/s 151. What is required is "knowledge" of a design i.e. of a plan for the commission of a particular offence and the particular person sought to be arrested must have been a party to that design i.e. must have been associated with it in some way, however slight. To arrest a person because he belongs to a party and that party has a programme to commit some offences in general, is to exercise the power of preventive detention. The authority of a police officer u/s 151, Criminal P.C. is only a limited and exceptional power to prevent the commission of a cognizable offence by the individual concerned and is in no sense analogous to the power of preventive detention.

Therefore, in our view, the restrictions on the exercise of the power as well as the guidelines to exercise it are inbuilt in the section itself.

12. Further, the power of remand is conferred upon a Judicial Magistrate. Before the remand is asked for, the officer making the arrest or the officer in charge of the police station, is duty bound to produce such arrested person before the nearest Judicial Magistrate together with a report in writing stating the reasons for the continued detention of such person for a period longer than twenty four hours. The duty to submit a report in writing stating the reasons acts as a check. The reasons cannot be recorded unless they exist. The obligation to record the reasons operates as a deterrent against a possible arbitrary action. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved is obvious. This is necessary to ensure that the decision has been reached after due consideration of the merits of the case uninfluenced by extraneous considerations of policy or expediency. This also helps the party aggrieved to demonstrate that the reasons which persuaded the authority to take action were erroneous. Then the Magistrate before whom the person is produced and the report in writing stating reasons is submitted has to be again objectively satisfied that there are reasonable grounds for further detention. The satisfaction contemplated is of a Judicial Officer. Therefore, he is obliged to apply his judicial mind to the material placed before him while passing the order of remand. This necessarily implies that he has to pass a speaking order giving reasons. The Judicial Magistrate is entitled to ask for further documents or material to get himself satisfied that there are reasonable grounds for the temporary detention. If the person is remanded to custody under Clause (b) by the Magistrate, then as soon as may be, the Magistrate is obliged to communicate to such person the grounds on which the order has been made. The expression "as soon as may be" in the circumstances must mean forthwith, meaning thereby without any unreasonable delay. If there is delay in communicating the grounds on which the order has been made, then the very right conferred upon the person arrested under Sub-clause (c) to make a representation to the Court of Session will become illusory. The Sessions Judge in the turn is at liberty to hold such inquiry as he deems fit. Thus, the power of remand is conferred upon a Judicial Officer and his order is again made subject to a representation to the Court of Session. The word "communicate" as used in Sub-clause (c) is also judicially interpreted.

In *Lallubhai Jogibhai Patel v. The Union of India* (supra) the Supreme Court observed that (at p. 733 para 20):

"Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the "ground" to the detenu is to enable him to make a purposeful and effective representation. If the "grounds" are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed.

In the present provision also, communication of the grounds on which the order has been made is necessary for making an effective representation to the Court of Session, against the order passed by the Judicial Magistrate. Therefore, it is needless to say that this communication should be immediate and will have to be such, on the basis of which an effective representation could be made to the Court of Session. Therefore, the Judicial Magistrate will have to supply a copy of the speaking order to the person arrested immediately and the order will have to be such which will disclose the grounds on which the order is based. If a representation is made, the Sessions Judge, after holding such inquiry as he deems fit, has to pass an order. In the very nature of things, such a representation will have to be decided before the remand period expires. Therefore, the hearing of the representation will have to be as expeditious as possible so that the remedy of representation will not become illusory, infructuous or an empty formality.

13. Since the power of remand is conferred upon a Judicial Magistrate and a representation is to be made to the Court of Session, it is not disputed before us by the learned Public Prosecutors that the person arrested will have a right to be represented by a counsel of his choice at both the stages. Further, before passing an order of remand or before deciding the representation made, the Judicial Magistrate as well as the Sessions Court will have to give a reasonable opportunity of being heard to the person arrested. Unless the procedure which is in consonance with the principles of natural justice is followed, no order of remand could be passed under Sub-section (3) of Section 151 or on the representation u/s 151(3)(c) of the Code. It cannot be forgotten that the said provisions are exceptional in nature and deprive a person of his liberty. To say the least, such a provision will have to be strictly construed and strictly complied with. This seems to be the reason why the powers in that behalf are conferred upon the Judicial Officers who are well-experienced in the field. Therefore, it is not possible for us to accept the contention of Shri Rane that unbridled or arbitrary powers have been conferred upon the Police officers or the Judicial Magistrate u/s 151(5). In this context it cannot also be forgotten, that an order passed by the Court of Session on a representation will also be subject to further scrutiny by the High Court either under Article 226 or 227 of the Constitution of

India. Thus it is quite clear that the power conferred upon the police officers is subject to judicial review. By Sub-clauses (b) and (c) a judicial control has been devised by the legislature while enacting Section 151(3) of the Code. Once it is held that the powers conferred upon the authorities are well-declined and guidelines are also laid down by the enactment itself, then it is not possible for us to hold that the said provision is violative of Article 14 of the Constitution of India. A mere possibility of abuse of power is no ground for declaring a provision as ultra vires. However, in a given case a particular order is open to challenge on the ground, not so much that it is in violation of the equal protection of the laws guaranteed under Article 14 or the provision itself is violative of Article 14, but on the ground that the same is ultra vires, as not being authorised or sanctioned in the enactment or it being an abuse of power or beyond the scope of the section itself. The procedure to be followed is thus just, fair and reasonable. Therefore, it cannot be said that the said provisions are violative of Articles 14, 21 or 22 of the Constitution of India.

14. It is no doubt true that though Section 151 is amended by inserting Sub-section (3), in the statute book no separate rules laying down the conditions of the custody of the person arrested under the said provision are framed by the Government. According to the Government, the usual rules regulating the conditions qua the persons in custody are applicable to the person so arrested u/s 151 of the Code of Criminal Procedure, We are sorry to note that the affidavits filed by the respondents in this behalf are beautifully vague. When a Rule Nisi is issued in a writ petition like this and a section itself is challenged being ultra vires and a notice is also issued to the Advocate General, then a better assistance is called for. In this case, the respondents have chosen to file an affidavit of one Shri Patil, who is merely a Sub-Inspector of Police. In spite of our repeated queries, it was not possible for the learned Assistant Government Pleader to say as to how the present petitioners were treated when they were in custody. Admittedly, they were neither convicts nor under-trial prisoners. Then what is their precise status has not been disclosed by the respondents, nor are we taken into confidence in that behalf. This is wholly regrettable state of affairs. After admitting that they are not under-trial prisoners, what is stated in the affidavit is that they are governed by the usual rules in regard to regulating the conditions qua persons in custody Obviously, the custody contemplated by Section 151(5) cannot be police custody because it is not an arrest in contemplation of the investigation of a crime. Therefore, the person arrested and remanded u/s 151 is not an under-trial prisoner. Therefore, to say the least the Government is duty bound to frame rules or issue guidelines as to how such persons should be treated while in custody. The expression "usual rules" is as vague as anything else. Since in the present case, no data is placed before us, either by the petitioners or by respondents, it is not possible for us to probe into the matter any further. In this context, we cannot do better than to draw the attention of the respondents to the decision of the Supreme Court in A.K. Roy's case (supra) wherein it is observed by the Supreme Court that (at p. 752 para

108): -

It is difficult for us to frame a Code for the treatment of detenus while they are held in detention. That will involve an exercise which calls for examination of minute details, which we cannot undertake. We shall have to examine each case as it comes before us, to order to determine whether the restraints imposed upon the detenu in any particular case are excessive and unrelated to the object of detention. If so, they shall have to be struck down. We would, however, like to say that the basic commitment of our Constitution is to foster human dignity and the well-being of our people. In recent times, we have had many an occasion to alert the authorities to the need to treat even the convicts in a manner consistent with human dignity. The judgment of Krishna Iyer J. in *Sunil Batra Vs. Delhi Administration and Others etc.*, is an instance in point. It highlights that places of incarceration are "part of the Indian earth" and that "the Indian Constitution cannot be held at bay by jail officials "dressed in a little, brief authority"". We must impress upon the Government that the detenus must be afforded all reasonable facilities for an existence consistent with human dignity. We see no reason why they should not be permitted to wear their own clothes, eat their own food, have interviews with the members of their families at least once a week and, last but not the least, have reading and writing material according to their reasonable requirements. Books are the best friends of man whether inside or outside the jail.

Then in para 109, the Supreme Court gave a specific direction that persons detained must be segregated from convicts and kept in a separate part of the place of detention. It is hardly fair that those who are suspected of being engaged in prejudicial conduct should be lodged in the same ward or cell where the convicts whose crimes are established are lodged. In paras 74 and 75 the Supreme Court has further observed that 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. It is also 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, as well as the place of detention etc. In our view, these observations aptly apply to the persons arrested and remanded to custody u/s 151(3) of the Code of Criminal Procedure. The person arrested and detained u/s 151(3) is neither a convict nor an under-trial prisoner. Section 151 of the Code is amended by the State legislature by Act No. VII of 1981, which deals with preventive detention of a person with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, obviously within the four corners of the Act. Since the legislature took the opportunity of amending Section 151, while enacting the Act relating to preventive detention, it appears to be legislative intent that persons arrested u/s 151 should be treated, if not better, at least on par with security prisoners detained under the National Security Act. Therefore, in our view, the persons remanded to custody u/s 151(3) of the Code are entitled to the facilities available to the persons detained

under the National Security Act.

15. So far as the merits of the controversy are concerned, the learned Public Prosecutors found it difficult to support the orders passed by the Police Officers or the Judicial Magistrate. Even otherwise if the orders passed by the Judicial Magistrate are read between the lines, it is quite obvious that the orders of remand have been passed by the Judicial Magistrate without any application of mind for the mere asking of it. There was no material on record to show that the petitioners had any design to commit any cognizable offence. There is also no material to show that they were likely to commit any such offences; or their being at large was likely to be prejudicial to the maintenance of public order. The power u/s 151 cannot be exercised only because a person believes in a particular ideology, or belongs to an action group or has resorted to hunger strike. As observed by the Supreme Court in *Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others*,

Peaceful and lawful revolt, eschewing violence, is one of the well-known modes of seeking redress in this country.... Now, expressions like "revolt" and "revolution" are flung about by all and sundry in all manner of context and it is impossible to attach any particular significance to the use of such expressions. Every turn against the establishment is called "revolt" and every new idea is labelled as "revolutionary". If the mere use of expressions like "revolt" and "revolution" are to land a person behind the bars what would be the fate of all our legislators? It all depends upon the context in which the expressions are used.... A hunger strike, in our country, is a well-known form of peaceful protest but it is difficult to connect it with public disorder.

In *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another*, , the Supreme Court observed that in India a citizen had, even before the Constitution a right to hold meetings etc. obviously subject to the rules and regulations as well as consideration of public order. A right to peacefully assemble is cognate to those of free speech and free press which is equally fundamental. A question about the right to stage demonstrations also fell for consideration of the Supreme Court in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, . In *Sakal Papers (P) Ltd. v. Union of India* AIR [1962] S.C. 805 , the Supreme Court held that the freedom of speech and expression includes freedom of propagation of ideas and that this freedom is ensured by the; freedom of circulation. The Supreme Court had also an occasion to consider the meaning and scope of the term "agitation" in *Gurcharan Singh and Others Vs. Prithi Singh and Others*, wherein it is observed that (at p. 228):

It is, in our opinion, wrong to treat every agitation as implying violence on a priori considerations. The glorious history of our freedom movement exemplifies that agitations may primarily be intended to be and can be peaceful. In this regard Gandhiji's life-work has perhaps no parallel. Nor indeed, in the West, of Dr. Martin Luther King. But agitations can also be meant to be violent under an apparently lawful cloak and there is ample power to quell these.

It cannot be forgotten that in a democracy you cannot have one and the same head on all shoulders. Therefore, nothing turns on the label attached and everything must depend on the facts and circumstances of each case. According to the petitioners, only because they are active members of the Vahini, a social action group and were trying to organise unemployed labourers to enable them to assert their right of employment under the Employment Guarantee Scheme, they are being harassed by the police at the instance of vested interests. These allegations are denied by the respondents. However, in this context, we would like to draw the attention of the respondents to the following observations of the Supreme Court in *Neeraja Chaudhary Vs. State of M.P.*, :

There are fortunately in our country a large number of such dedicated social action groups-young men and women inspired by idealism and moved by a passionate and burning zeal to help their fellow beings -whose services can be utilised for identification, release and rehabilitation of bonded labourers. We would strongly urge upon the .State Government to include the representatives of such social action groups in the vigilance committees and to give them full support and co-operation. These social action groups may appear to be unorthodox and unconventional and their actions may be marked by a sense of militancy, but they alone will be able to deliver the goods and it is high time that the State Government should start taking their assistance instead of "looking at them askance and distrusting them. The vested interests would undoubtedly be against such social action groups which are trying to organise the poor and the oppressed and would try to attack and destroy such social action groups with all the resources at their disposal including filing of false cases and even physical assaults, but the State administration should not allow itself to be dominated or influenced by the vested interests and under the guise of maintenance of law and order, harass and oppress the disadvantaged sections of the community whom such social action groups are trying to organise with a view to making them strong and self-reliant and capable of fighting for their rights through the process of law.

This Court had also an occasion to consider a similar question in *Ahmednagar Zilla Shet Majoor Union v. State of Maharashtra* [1985] L.I.C. 364 (Bom.) to which one of us (Dhar-madhikari J.) was a party.

16. In the present case, it is conceded that the orders of remand passed by the Judicial Magistrate are beyond the scope of the section and, therefore, are liable to be set aside.

17. In the result, therefore, the writ petition is partly allowed. The orders of remand passed under Sub-section (3) of Section 151 qua the petitioners are set aside.

18. Shri Rane had also contended that this is a fit case wherein the petitioners should be granted compensation since their detention was wholly illegal. In support of this contention he has placed strong reliance upon the decision of the

Supreme Court in Rudul Sah v. State of Bihar (supra). However, in our view, the said case is distinguishable on facts. Though in this case we have held that the orders passed were bad in law, we do not think that this is a fit case for grant of compensation in these very proceedings. The petitioners, if so advised, are at liberty to file a suit to recover damages from the State Government, if permissible in law. However, since the matter was argued for a considerable length of time, in our view, this is a fit case where the petitioners should be granted costs of the petition, which are quantified at Rs. 1,000/-. Costs to be deposited in this Court within two months.