
(1987) 02 BOM CK 0039

In the Bombay High Court

Case No : Criminal Writ Petition No"s. 102, 104, 108, 117 and 118 of 1986

Shaikh Moin " Kabadi

APPELLANT

Vs

District Magistrate, Parbhani and Others

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

National Security Act, 1980 — Section 3(1), 5A

Citation : (1987) 2 BomCR 501

Hon'ble Judges : P.V. Nirgudkar, J;G.H. Guttal, J

Bench : Division Bench

Advocate : N.P. Chapalgaonkar, in W.P. 102/86, Akbar Patel, in W.P. 104/86, S.A. Deshmukh, in W.P. 108/86 and K.G. Kader and Asif Ali, in W.P. 117/86 and 118/86, for the Appellant; B.B. Jadhav, Assistant Public Prosecutor in W.P. 102/86, 104/86, 108/86, 117/86 and 118/86, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The petitioners who are residents of Parbhani were detained u/s 3(4) of The National Security Act. The orders of detention were made by the District Magistrate bear Nos. 1986-A-Pol-NSA-7; 1986/A/POL/NSA-10; 1986-A-Pol-NSA-6, 1986/Pol-A-NSA-8; 86-A-POL-NSA-9 respectively all dated 22nd August, 1986. The District Magistrate, Parbhani is respondent No. 1, to Criminal Writ Petition Nos. 102 of 1986; 117 of 1986 and 118 of 1986 and respondent No. 2 in Criminal Writ Petition Nos. 104 of 1986 and 108 of 1986. The State of Maharashtra are respondent No. 2 in Criminal Writ Petition Nos. 102 of 1986; 117 of 1986 and 118 of 1986 and respondent No. 1 in Criminal Writ Petition Nos. 104 of 1986 and 108 of 1986. In all these petitions under Article 226 of the Constitution of India, the petitioners challenge orders of detention made respectively against them.

I. The facts

2. The petitioners were detained on 22nd August, 1986. The grounds of detention were served on the respective petitioners on 22nd August, 1986. Soon

after the receipt of the reports of the detaining authority the orders were approved by the State Government on 22th August, 1986. The copies of the orders of detention and the grounds of detention were in English and Marathi. The contents thereof were explained to each detenu in Urdu under separate panchanamas. The petitioners affixed their signatures in Marathi. The reports u/s 3(5) of the National Security Act received by the Government of India on 1st September, 1986. The State Government approved detention orders on or about 1st September, 1986.

3. The summary of the various crimes alleged to have committed by the petitioners in the past is as under :-

Crime R. No. 276/84, 155/84, 275/85 u/s 160, 324 and 147, 148, 458 of the Indian Penal Code were registered against the petitioner in Criminal Writ Petition No. 102 of 1986.

Crime No. 105/84 and 246/84, were registered against petitioner in Criminal Writ Petition No. 118 of 1986, Crime No. 105 of 1984 also involved the petitioner in Criminal Writ Petition No. 114 of 1986 and his associate. Offences were u/s 324 of the Indian Penal Code.

Rafatali Khan petitioner in Criminal Writ Petition No. 117 of 1986 was the accused in Crime No. 172 of 1984, involving offences under sections 324, 323, 234, 504 of the Indian Penal Code. Knife and blade were used.

The petitioner in Criminal Writ Petition No. 104 of 1986, Yusufkhan, was involved in Crime Nos. 12/1984, 105/1984, 231/1984 and 274/1985. The offences were under sections 147, 148, 149, 327, 323, 324, 394 and 160 of the Indian Penal Code. The weapons like axe were used. A police constable was assaulted by a piece of glass.

Alam Khan the petitioner in Criminal Writ Petition No. 108 of 1986 was the accused in Crime Nos. 206/1982 and 302/84 124/85, 143/85 and 177/1985. The offences were u/s 324, 505 and 160 of the Indian Penal Code. The offences involved extortion of money by use of knife, assault by knife and affray.

The incident revealed by crimes registered as Nos. 77/1986 and 107/1986 are the foundation of the grounds on which the orders of detention were made, it is necessary to set out substance of these cases.

On 13th March at about 3 A.M. PSI Mandhane and Deputy Superintendent of Police Sharma intercepted motor car No. GJO 9565 at Khandegaon. It was coming from Nanded. Shaikh Moin Kabadi (Petitioner No. 102/1986), Mohd. Haroon, Parab Ali and Khurshid Jamir Khan were found in this vehicle, 22 swords, 23 daggers, 11 Barachis and 6 bottles of liquor were found. The Case No. 77/198 was registered at the Basmathnagar Police Station. The F.I.R. named the persons referred to above. The arms were purchased from a Gurudwara in Nanded.

The three persons including Shaikh Moin Kabadi (Petitioner in Cri. Writ Petition

No. 102 of 1986) were interrogated. They revealed that 15 days ago they had met their associates, collected money, and purchased 20 swords and 2 jambiyas and distributed them to different persons. Swords were attached from the house of these petitioners. They led the Police to the houses of the persons to whom they had distributed the weapons. The arms were seized under different panchanamas. During the interrogations these persons admitted that the arms were brought for the purpose of fighting Shiv Sena. On the basis of the material collected during this investigation and the searches made the names of the petitioners in Criminal Writ Petition Nos. 117 of 1986; 118 of 1986, 104 of 1986 and 108 of 1986 were revealed. This is how the Crime No. 107 of 1986 came to be registered.

5. During the course of the investigation two persons A & B made statements to the Investigating Officers. Names of A & B have not been revealed as they apprehend that they will be killed by detenués or their men. Both these witnesses have named Shaikh Moin Kabadi (petitioner in Criminal Writ Petition No. 102 of 1986), Rafatali Khan (petitioner in Criminal Writ Petition No. 107 of 1986), Yusufkhan Sherkhan (petitioner in Criminal Writ Petition No. 104 of 1986), Mohd. Jalaluddin (petitioner in Criminal Writ Petition No. 118 of 1986), Alam Khan (petitioner in Criminal Writ Petition No. 108 of 1986), and others as the persons indulging in anti-social activities instigating communal hatred. They stated that these persons imported arms from a Gurudwara in Nanded. The gist of the statements of these witnesses was supplied to the petitioners. There are other witnesses who have made similar statements.

6. On 5th September, 1986, the cases of petitioners were referred to the Advisory Board constituted under the Act. The Advisory Board called upon the petitioners individually to send their representations. On or about 22nd September, 1986, the petitioners sent elaborate representations to the Advisory Board. The representations do not contain a grievance that the orders of detention and the grounds were not explained to them in a language understood by them.

7. The petitioners in the representations have dealt with and denied :-

- (a) the allegations of involvement in the various crimes registered against them and have given case by case version of those allegations.
- (b) that weapons purchased, imported or distributed by them;
- (c) that they terrorised people or disturbed public order;
- (d) that witnesses are afraid of testifying against them;
- (e) that they indulged in anti-social communal activities.

8. The Advisory Board who considered the representations alongwith the references made to them State Government formed their opinions on 24th September, 1986 which were received by the State Government on 30th

September, 1986.

9. The representations of the petitioners and the opinions of the Advisory Board thereon were considered by the State Government. The orders of detention were in the cases of petitioners in Criminal Writ

(ii) The representations were not considered by the State Government which is bound to consider though not addressed to the Government.

(iii) In the cases 77/1986 and 107/1986 which provide the cause for detention, the petitioners were actually released on bail. The detaining authority failed to consider this aspect. Similarly, all the previous crimes except those in Crime Nos. 77/1986 and 107/1986 did not involve communal riots. For these reasons, it should be held that the detaining authority did not apply his mind to the facts on which he made the orders.

(iv) the events prior to the registration of offence 77/1986 and 107/1986 are of a different kind. In some cases referred to in paragraph 3 of this judgment the petitioners were acquitted. They are trivial incidents not warranting preventive detention. The crimes registered as No. 107/1986 was not based on any incident, but the registration of the crime is the result of investigations. In Crime Nos. 77/1986 and 107/1986, the petitioners Yusufkhan (Criminal Writ Petition No. 104/1986) and Alam Khan (Criminal Writ Petition No. 108/1966) have not been named. For one or more of these reasons, the orders of detention suffer from want of nexus.

We will presently consider these points.

III. The Grounds of Detention-Whether Understood by the Petitioners

13. The petitioners" claim that their mother tongue is Urdu and they are ignorant of English and Marathi language. It is true that Marathi translations of the grounds of detention and of documents such as first information report, panchanama and so on were supplied to the petitioners on 22nd August, 1986. On being invited by the Advisory Board, the petitioners sent in their representations on 22nd September, 1986. The District Magistrate in paragraph 2 of his affidavit has disputed the fact that the petitioners do not know Marathi though he admits that their mother tongue is Urdu. The District Magistrate says :

"It is incorrect to say that the petitioner cannot read or write any other language. I say further that the petitioner when served with the orders, the contents of orders and documents were explained to him on 22nd August, 1986 in presence of two panchas before the Police Inspector, Nanalpeth, Parbhani and signature to this effect has been made by the petitioner in Marathi."

Then he goes on to add-

"At that time the petitioner has not made any grievance about his not knowing the English or Marathi language nor he demanded documents in any other language."

Thirdly, the District Magistrate asserts-

"The representation made by the petitioner to the Chairman, Advisory Board, Home Department, Mantralaya, Bombay is in English language and he has signed the same as such".

The District Magistrate then urges that the petitioners did not raise a contention in his representation to the Advisory Board that the grounds and the documents accompanying the grounds were supplied to him in a language which he did not understand and that therefore, he was unable to make an effective representation. Similar statements have been made in the affidavits-in-reply in all petitions. It is against the backgrounds of these uncontroverted adverments that the first point has to be judged.

14. The original panchanama bearing signatures of the petitioners in token of having understood the contents of the grounds were shown to us and we are satisfied that the grounds were in fact explained to the petitioners in a language understood by them in token of which they affixed their signatures. The subsequent conduct of the petitioners is not urging before the Advisory Board that the grounds were not communicated in a language understood by them together with the fact that they did not make representations and signed them are inconsistent with the submissions made for first time in this Court.

15. In Jagannath Vs. State of West Bengal, , the petitioner was supplied the grounds of detention in English and vernacular. The petitioners had affixed his signature on the petition in the vernacular. The petitioner did not complain in the representation that the grounds supplied to him were in a language not known to him. The Supreme Court held that the communication was valid. In Netaipada Shah Vs. The State of West Bengal, , the grounds of detention were saved in the mother tongue of the detenu. The detenu was illiterate. In the counter-affidavit of the detaining authority, it was not expressly stated that the grounds were explained to him in his mother tongue. Inspite of this, the Supreme Court held :---

"Merely because that fact has not been expressly stated in the counter-affidavit, it would not mean that the ground was not explained to the petitioner in his mother tongue. Had the ground not been read over and explained to him, the petitioner would have complained in is representation that he was not in a position to know the precise nature and content on the ground, and that therefore, he was not in a position to make proper representation. That not being the case, it is impossible to believe that the ground was not read over and explained to him."

16. Another important case which negative the petitioner's argument is Suru Mallick Vs. State of West Bengal, wherein the illiterate petitioner had put his thumb impression in token of having received the grounds of detention. But immediately after the service of the grounds he made a representation. The Supreme Court concluded that the grounds of detention must have been

communicated to him because he understood the grounds and made an effective representation. In *Bhola Bhuiya Vs. The State of West Bengal*, , the order of detention and grounds were explained to an illiterate person in his own language. The Supreme Court held that the communication was valid. Similarly, in *Didar Singh Vs. The District Magistrate, Amritsar and Others*, where the detenu was served with grounds of detention in English together with translated copy in Punjabi (Gurmukhi Script), the detenu claimed that his mother tongue was Urdu. Lengthy representation was made by the detenu to the Government in English and signed by him in Punjabi. The Supreme Court had no hesitation in holding that there was an effective opportunity to meet the grounds of detention.

17. The facts of these petitions reveal that the petitioners were infact explained the grounds in their language of which panchanamas were made. They made detailed representations of nearly 8 pages to the Advisory Board. The representation of the petitioner in Criminal Writ Petition No. 102 of 1986 was supported by affidavits of in certain persons. The affidavits which are in marathi reveal that those who made affidavits knew what the grounds were about. They have referred to the enmity between Hindus and Muslims and recommended that the petitioners did not do anything against public order. All these affidavits could not have been secured unless petitioner knew what the grounds were. It cannot, therefore, be held that the petitioners did not understand the grounds on which they were detained. Similarly, the petitioners in Criminal Writ Petition Nos. 104 of 1986, 108 of 1986, 117 of 1986 and 118 of 1986 effectively represented their cases as set out in paragraph 7 above. The contents of these representations leave no doubt that they understood the grounds of detention. The first submission made on behalf on the petitioners is, in our opinion, without any merit.

18. The decision of this Court in *Sabira Begum Habibullah Shaikh Vs. District Magistrate and Others*, was relied upon. There are three facts which distinguish Sabira Begum's case from that of the petitioners. Sabira Begum's case was marked by the absence of evidence such as the panchanama whereunder the grounds were explained to the detenu in her language. There was a mere assertion by the detaining authority that the grounds were explained in Marathi. The detaining authority relied upon mere signature of the detenu in Marathi and presumed that the detenu knew Marathi. In the present case, there is unimpeachable evidence to prove that the contents were in fact explained in Urdu to the petitioners. Secondly, the petitioners made representations supported by affidavits the contents of which disclosed knowledge of the facts relevant to the accusations made against the petitioners. Thirdly the petitioners never made this grievance in their representations to the Advisory Board. The significance of the absence of such grievance in the representation was highlighted by the Supreme Court in *Netaipada Shah Vs. The State of West Bengal*, . The decision in Sabira Begum's case is inapplicable.

In *Magalin v. State of Maharashtra* 1982 M.L.J. 50 relied upon by the petitioners,

the detenu urged that :---

"the order of detention was not served of the detenu in the language he understood nor the contents of the order were ever explained to him."

In the present case the facts set out in paragraphs 13, 14 and 17 above leave no doubt that there was valid communication of the order and the grounds of detention. The judgment does not apply to the facts of this case.

IV. Whether the State Government Considered the Representation

19. The second argument is that the representations to the Advisory Board were not considered by the Government which it was bound to do. In the first place, this ground has not been raised in the petition. In *Netaipada Shah Vs. The State of West Bengal*, , the Supreme Court has emphasised the need to make an averment in the petition so that the respondent has an opportunity to clarify the point. In the present case too, since this ground has not been taken, the respondents have been denied the opportunity of explaining effectively as to whether representations were considered and when they were considered by the State Government. In fact no representations were addressed to the State Government. Even so, Vishwasrao, the Desk Officer, Home Department has taken care to clarify the action taken by the Government. He says :---

"The said representation was received in this department together with the report of the Advisory Board on 30th September, 1986. The representation was also considered by the Government alongwith report of the Advisory Board and the order of detention was confirmed by the Government."

There is no denial of this fact nor were further particulars sought in regard to this statement. We, therefore, hold that the State Government infact considered the representations alongwith the reports of the Advisory Board although no separate representations were addressed to the State Government.

20. The submission made on behalf of the petitioners is thus divorced from the facts and does not answer the respondents' case that the representations were infact considered. Reliance was placed on *Jnanendra Nath Roy Vs. The State of West Bengal*, and it was urged that irrespective of a reference to the Advisory Board, the Government is under a legal obligation to consider the representation of the detenu. In that case, the State Government had received a separate representation from the petitioner against the order of detention. No doubt the consideration of the detenu's representation by the State Government is an obligation distinct from its consideration by Advisory Board. Admittedly, petitioners made no representation to the Government. Therefore, the decision referred to does not assist the petitioners. Even so, the Government did consider the representation. Had Government received the representation and had shelved its consideration. It would have been a different matter. As already stated, since this point has not been raised in the petition, the respondents cannot be expected to meet such point. From the uncontroverted statement of

Vishwas Rao we are satisfied that the representation of the petitioners were considered by the State Government.

V. Release on Bail

Non-Application of Mind

21. The third submission is that the detaining authority did not apply its mind to the fact that petitioners were infact released on bail by orders of the Court. Whether the detaining authority applied their mind to this fact or not is a question of fact. It was necessary for the petitioners to urged in their petition that this fact was not taken into consideration before the order of detention was made. In the absence of such an averment in the petition, respondents cannot be expected to meet this point. For instance the detaining authority might have considered this point or he may have some explanation about the relevance of the petitioners' release. If there is no pleading of this fact and its effect, respondents cannot be expected to meet such a point. Once again we may refer to Netaipada Shah Vs. The State of West Bengal, and Jagannath Vs. State of West Bengal, where relevance of the absence of averment in the petitions was taken into consideration for deciding the fact. Had there been such an averment, respondents would have come out with a case as to whether actually they were released on bail, when they were released on bail, and its effect on the satisfaction of the District Magistrate. Counsel for the petitioner relied upon Anant Sakharam Raut Vs. State of Maharashtra and Another, where all the three incidents on the basis of which the District Magistrate made the order of detention were the result of personal enmity between the accused and the complainant. The petitioner was undertrial prisoner who was enlarged on bail and the cases were pending. But as already stated, there is no pleading on this point in the present case. It is, therefore, not possible to hold that on this account the order suffers from the non-application of mind.

The judgment in Binod Singh Vs. District Magistrate, Dhanbad, Bihar and Others, has no application to the facts of this case because in that case the order of detention was served on the detenu who was already in jail and there was no indication that the release of the detenu was imminent.

VI. Relevance of Facts-Nexus

22. The substance of this submission is set out in paragraphs 11 and 12 above and need not be repeated.

(i) The Cases of 1984-85-Nexus

23. Let us first understand the substance of the grounds of detention. The offences alleged to have been committed in 1984-85 involved violence by weapons. In some cases the offences also involved the assault on public servants, and in public places. The incidents which provided impetus to the decisions of the detaining authority to detain the petitioners are of March, 1986. The grounds of detention set out, all these incidents and stated that the

petitioners are habitual law brokers, always purchasing and carrying weapons and a big bulk of arms like Jambiyas and swords were in fact purchased and brought to Parbhani and distributed with the intention of starting communal riots. This conclusion drawn from the totality of the offences registered against the petitioners makes it clear that, according to the detaining authority, the petitioners have terrorised the localities, created panic and sense of insecurity. Therefore, he concludes that there was likelihood of communal riots and disturbance of public order. It is against the background of these facts that the submissions summarised above will have to be considered.

24. By their very nature, the orders of preventive detention involve forecasts in general terms based on past conduct of which particulars can be given. All that can be done is to state the apprehension in the form of grounds as to what the detenu is likely to do having regard to the particulars of past activities which may be given so that preventive detention is shown to have become necessary. Another principle which is required to be borne in mind is that the law of preventive detention is a different field of criminology which has its own guidelines, and the Court has to go by them without telescoping into them what a Criminal Court expects in a trial of an accused brought before it. The Court's jurisdiction is confined to the examination of violation of those guidelines which have been woven in a consistent fabric by the decisions of the Supreme Court over the years *Anil Dey Vs. State of West Bengal*, . The third principle is that where the opinion of the officer should be honest and real and not so fanciful or imaginary, that on the facts alleged no rational individual will entertain the opinion necessary to justify the detention. Even if the incident attributed to the detenu has some connection with the obnoxious activities, it should not be too trivial in substance nor too stale in point of time as to snap the rational link between the vicious episode and the prejudicial activities sought to be interdicted. See *Anil Dey Vs. State of West Bengal*, .

25. We will assume that the incidents of 1984-85 were remote in point of time with reference to the last incident of March, 1986. But it is from the prior events showing tendency or inclination of a man that an inference can be drawn whether he is likely to act in future in a manner prejudicial to the maintenance of public order. As held by the Supreme Court in *Sri Nagen Murmu Vs. The State of West Bengal*, and *SK. Abdul Munna Vs. The State of West Bengal*, it is both "inexpedient and undesirable to lay down any inflexible test as to how far distant the past conduct or the antecedent history should be for reasonably and rationally justifying the conclusion that the person concerned if not detained may indulge in prejudicial activities". There is no inflexible test as to how remote or how proximate the events should be but the detaining authority should explain the delay with a view to show that there was proximity between the prejudicial activity and the detention order.

26. The decision of the Supreme Court in *Gora Vs. State of West Bengal*, is instructive. There was a time lag of six months between the offending acts and

the date of detention order. The Supreme Court held that since there was no hard and fast rule that merely because there was a time lag of six months, the causal link must be taken to be broken and the satisfaction of the detaining authority was sham or unreal. The Supreme Court emphasized that the test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. The determinative factor is whether the past activities of the detenu are such that a reasonable prognosis can be made as to the future conduct of the detenu. The test of proximity is thus a subsidiary test. Finally, the Supreme Court considered that the solitary daring act of dacoity committed six months ago provided the necessary nexus with the detention order. In our opinion while time lag may be subsidiary yet relevant test, qualitative nexus cannot be overlooked.

27. Coming to the facts of this case, the offences, though isolated, involved use of weapons. The subsequent events revealed that the petitioners were in fact importing weapons and using them to terrorise people. The element of terrorising is clear from the fact that some offences were committed in public places and against the public servants. The detaining authority who had before him the record of all these cases considered that they provided a chain of events culminating in the last incident of March, 1986, involving the same persons and came to the conclusion already referred to. We may hold a different view if we were to decide whether these grounds should have satisfied us; but that is not the Court's function. The District Magistrate who considered these events in injunction with the Court Cases No. 77/1986 and 107/1986 involving distribution of arms for communal riots affirms that he was satisfied that the petitioners activities imperil public order. If the grounds were relevant and were so related to the last incident as to raise an apprehension that the petitioners would use the weapons, terrorise people and disturb public order, we do not consider that they were irrelevant or too remote to justify the order of detention.

(ii) Act 60 of 1984-Section 5-A Introduced

28. However, the question of validity of the detention order on the ground that the incidents of 1984-85 taken together or individually were remote or irrelevant need not detain us any longer. By Act No. 60 of 1984, the Parliament has stepped in to amend the National Security Act by introducing section 5-A which we reproduce below :

"5-A Grounds of detention severable :

Where a person has been detained in pursuance of an order of detention (whether made before or after the commencement of the National Security (Second Amendment) Act, 1984) u/s 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly.

"(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are-

- (i) vague,
- (ii) non-existent,
- (iii) not relevant,
- (iv) not connected or not proximately connected with such person, or
- (v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) The Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

29. Section 5-A of the Act has the following ingredients :

"(a) Where the order of detention is made on two or more than two grounds, such order shall be deemed to have been made separately on each of such grounds;

(b) Such order, meaning thereby the order deemed to have been made on each of the grounds, shall not be invalid or inoperative because one or some of the grounds inter alia are not proximately connected with such person.

(c) It cannot be held that the detaining authority was not satisfied with reference to the remaining grounds or grounds. The detaining authority shall be deemed to have been satisfied with reference to the remaining grounds.

Thus, it is clear that even if it is assumed that the facts constituting one or more offences registered in 1984-85 are considered in one set and the facts constituting crimes Nos. 77/1986 and 107/1986 are taken in another set, the order of detention is deemed to have been made separately in respect of each set of grounds or in respect of each offence. Indeed in terms of section 5-A of the Act, the order of detention is deemed to have been made separately in respect of each of the cases against the petitioners detenus. The legislative intervention by section 5-A of the Act has thus removed from the authority of the Courts the question of remoteness or the relevance of the grounds where some grounds are irrelevant or remote. The submission made on behalf of the petitioners that the incidents of 1984-85 have influenced the order of detention which was made also on the basis of the incidents in Crimes Nos. 77/1986 and 107/1986 and therefore, the whole order is illegal is opposed to the statutory mandate of section 5-A of the Act. Thus, even if some of the grounds are vague, non-existent, irrelevant or remote, the grounds which are relevant and proximate can still form the foundation of a valid order of detention. The Legislature has enacted that the order of detention shall be deemed to have been made after being satisfied "with reference to the remaining grounds" which means the

grounds with reference to the Crimes Nos. 77/1986 and 107/1986. the argument of the petitioner is, therefore, unfounded.

(iii) The Effect of Acquittals

30. The effect of acquittal of the petitioners in some of the cases was strongly relied on and it was urged that the Detaining Authority having been influenced by those incidents in respect of which they were acquitted acted on irrelevant material in making the order of detention. In the first place, having regard to section 5-A of the Act, even if some of the grounds are irrelevant, the order can be upheld if the remaining grounds are relevant. Even so, we will examine this submission. It is true that the petitioners in Criminal Writ Petitions Nos. 104 of 1986, 108 of 1986 and 118 of 1986 were acquitted in two out of four cases filed against each of them in 1984-85 and the remaining cases are pending. But mere acquittal in some of the cases does not mean that the facts of those cases cannot be taken into account for the purpose of detention provided, that the Detaining Authority has explained the reasons for such acquittal. In the affidavits in reply filed in each of the petitions, the Detaining Authority has asserted that because of the petitioners' intimidating and violent activities the witnesses do not come forward to testify. This resulted in their acquittal. In our opinion, this is adequate explanation of the acquittals of the petitioners. In *Vijay Narain Singh Vs. State of Bihar and Others*, the Court found that the grounds taken from the Criminal case where the accused were acquitted can be taken into consideration for the purpose of preventive detention. In *Sadhu Roy v. State of West Bengal* AIR 1975 S.C. 919 the petitioner who was discharged in two criminal cases urged that he was entitled to be enlarged from preventive captivity. While laying down certain guidelines the Supreme Court held :

"More concretely, if witnesses are frightened off by a desperate criminal, the Court may discharge for deficient evidence but on being convinced (on police or other materials coming within his ken) that witnesses had been scared of testifying, the District Magistrate may still invoke his preventive power to protect society."

In *Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others*, the argument that because the accused has been discharged in a criminal case the ground of the charge cannot be relied on by the appropriate authority for passing an order of detention was rejected. In *Mohd. Salim Khan Vs. Shri C.C. Bose and Another*, while dismissing similar submission the Court emphasised that the subjective satisfaction which is the basis of an order of detention is that of the relevant District Magistrate and not of the Court of law. In *Vakil Singh Vs. The State of J. and K. and Another*, the detenu was released for want of sufficient evidence and yet, the order of detention was upheld.

31. The petitioners relied upon the judgment in *Bimla Dewan Vs. Lieutenant-Governor of Delhi*, where the detention based on consideration of cases in which the petitioner was acquitted was held illegal. In that case the order of detention

was made on 26-9-1981. The facts of the case in which the petitioner was acquitted being irrelevant the Supreme Court held that the order was vitiated. Now the case arose before the Amending Act No. 60 of 1984 by which section 5-A was introduced. The judgment has no application to this case.

32. We are of the opinion that merely because in some of the cases, the petitioners were acquitted is no reason for concluding that an order of detention could not be subsequently made on the same facts. It may be that an accused cannot be prosecuted again. But the considerations which apply for preventive detention are different from those applicable to the courts trying criminal cases. If the facts disclosed during the investigation of the cases in which the petitioners were acquitted are relevant for the formation of opinion by the District Magistrate, an order of detention can be validly made.

33. It was urged that the acts were trivial and mainly directed against individuals thereby depriving them of the public order content. Taking in isolation one or two of these acts may appear to be directed against individuals. Here again the acts were not isolated. They were more than one. The petitioners were being prosecuted. While the prosecutions were pending incidents giving rise to Crime Nos. 77/86 and 107/86 occurred and the role of petitioners which lends new dimensions to their activities came to the surface. The quality of the previous acts which consisted of rioting, arson, assault on public servants, use of knives, glasses and such other weapons were in the mind of the Detaining Authority. If while the Police Officers were engaged in prosecuting the petitioners for the offences committed in 1984-85, the events giving rise to Crime Nos. 77/1986 and 107/1986 occurred, can it be said that the District Magistrate had no material to satisfy himself subjectively about the role of the petitioners ? It is the qualitative connection between all these acts and their cumulative effect that was taken into account by the District Magistrate. In our opinion, all these events were relevant to the last two cases and the consequent detention.

34. The names of Yusuf (Writ Petition No. 104/1986) and Alam Khan (Writ Petition No. 108 of 1986) do not occur as the accused in the first information reports. Because of this it is urged that there is no connection between these petitioners and the incidents which gave rise to the order of detention. The first information report is not a detailed catalogue of all the facts that constitute the crime. Recording of statements of witnesses, seizures and collection of other facts are steps which follow the F.I.R. To urge that because the names of accused do not occur in the first information report, the petitioners were not connected with the offences disclosed therein is to confuse the jurisprudence governing the trial of criminal cases with the jurisprudence of preventive detention. The jurisprudence dealing with criminal trials relates to punitive branch of criminal law and to the past commission of acts. The jurisprudence of preventive detention, on the other hand, deals with the social defence and seeks to protect society from future injury based on the prognosis about the future conduct of detenu. Golam Hussain's case AIR 1974 S.C. 1136. The investigation of a case

begins with the first information report and does not end with it. After the crime is registered, statements of witnesses are recorded, searches are made and facts gathered. It is this material that brought forth the involvement of the petitioners. Mere absence of the names in the first information report, does not mean that the investigating authorities and therefore the District Magistrate was not in possession of the subsequently collected material which implicates the petitioners. In this case the statements of A and B and other witnesses in fact implicated the petitioner from whom the weapons too were recovered. What the Detaining Authority is required to do is to take into account the conduct of detenu and come to a conclusion as to whether he is likely to endanger public order. In this case he did it on the basis of not only the first information reports but the statements of witnesses which implicated the petitioners.

(v) Triviality of Incidents-One Incident Sufficient

35. The incidents are alleged to be trivial not warranting preventive detention. The nature of incidents especially importing and distribution of the arms for communal riots are serious enough. The incidents of March, 1986, (Crime Nos. 77/1986 and 107/1986) alone, were adequately relevant for the satisfaction of the District Magistrate.

In view of section 5-A of the Act, the grounds are severable and each ground forms the independent basis of the order of detention. The incident of March, 1986, in which arms like swords, barchis and daggers were purchased from the Gurudwara of Nanded, brought to Parbhani and distributed for the purpose of communal riots by the petitioners is itself a ground of detention. An attempt was made to urge that since the previous incidents of 1984-85 are remote, the incident of March, 1986, which is isolated and solitary did not call for preventive detention. In other words, the question is whether the solitary act or incident could form the basis of an order of detention. Whether purchase of arms from the Gurudwara and its distribution for the purpose of spreading communal riots could be the basis of a prognosis about the petitioners' future conduct was for the Detaining Authority to decide. He has done so far reasons stated by him. There is no cut and dried formula to determine as to what should satisfy the Detaining Authority. There are cases and cases, incident and incidents. A solitary incident may be so unique in its gravity and potential to disturb the public order that the Detaining Authority be justified in being satisfied that it was necessary to prevent the activities by detention of the detenues. We do not consider it necessary to quote the judgments of the Supreme Court on this point but we will refer to them briefly. The substance of the matter is that the nature of the act and attendant circumstances and quality of the act of the petitioner, are of supreme importance. In *Mrs Saraswathi Seshagiri Vs. State of Kerala and Another*, a solitary incident of exporting large amount of Indian currency : in *Alijan Mian Vs. District Magistrate, Dhanbad and Others*, a solitary incident of organised stopping of goods train and looting them, in *Dharua Kanu Vs. State of West Bengal*, a solitary incident of removal of fish plates from a running track

and in Babulal Das Vs. The State of West Bengal, the solitary incident of organised armed train dacoity were held sufficient to establish the nexus with the detention. It is the quality of the incident, its potential for threatening public order, propensity of the detenu to repeat such crimes and the organised nature of the activity are factors which naturally weigh with the Detaining Authority. If these factors are present, one or more of these factors may be enough to lead to the subjective satisfaction necessary for making the order of detention. In our opinion, the Detaining Authority for the reasons stated by him was justified in making the orders of detention.

The case of Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others, was relied on by the petitioners. The grounds of detention in that case revealed that the detenu who had quarrelled with the bus conductor refused to pay and left the bus after threatening him. Later on the same day, along with 7-8 persons the detenu stopped the minibus and attacked the conductor with a dagger. Seven months later the detenu threatened a lemon water vendor with a dagger for having asked the detenu to pay the price of lemon water. The incidents in that case were a different nature and were essentially between individuals. Besides, in that case there was not even a suggestion that the witnesses had been scared off from testifying. For these reasons the judgment has no application to the facts of this case.

VII Conclusions and Order

36. To sum up therefore-

(1) On the material produced before us and having regard to the panchanamas, recording that the contents of grounds were explained to the petitioners in their language the representations made by the petitioners bringing out a knowledge of the contents of the grounds supplied to them, and the absence of any grievance about non-communication of the orders to them it is clear to us that the grounds of detention were validly communicated to the petitioners and understood by them.

(2) In view of the uncontroverted averment by the District Magistrate, we conclude that the petitioners' representations were considered by the State Government.

(3) The cases of 1984-85 together with the facts of Crime Nos. 77/86 and 107/86 taken together were relevant and had infact satisfied the Detaining Authority that the petitioners were liked to disturb public order and terrorise people thereby justifying the order of detention.

(4) Having regard to the section 5-A of the National Security Act, introduced by Act 60 of 1984 orders of detention were justified on the grounds stated therein.

(5) Having regard to section 5-A of the National Security Act and also the total effect of facts of the cases in which the petitioners were acquitted and the cases Nos. 77/1986 and 107/1986, detention is valid.

(6) Notwithstanding the absence of the names of the petitioners in Criminal Writ Petitions Nos. 104 of 1986 and 108 of 1986, their detentions are valid as they are based on the facts revealed by the statement of witnesses and the previous cases.

(7) Even if it is assumed that the incidents of 1984-85 are remote or irrelevant, the incidents which gave rise to Crime Nos. 77/86 and 107/86 alone were relevant for the satisfaction of the District Magistrate.

ORDER

37. For the reasons stated in the above judgment we make the following order-

(I) Criminal Writ Petition Nos. 104 of 1986 and 108 of 1986 are dismissed.

(II) Criminal Writ Petition Nos. 102 of 1986, 117 of 1986 and 118 of 1986 are dismissed.