

(2006) 07 GAU CK 0067

In the Gauhati High Court

Case No : Writ Petition (C) (HC) No. 01 of 2006

Shyamal Das @ Simul

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 19, 19(1), 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 161
National Security Act, 1980 — Section 3, 3(3), 3(4), 8(1), 8(3)
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2006) 3 GLT 512

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : Somik Deb, S. Lodh, B.N. Majumdar and S. Chowdhury, for the Appellant; P.K. Biswas, S. Chakraborty and S. Bhattacharjee, for the Respondent

Judgement

I.A. Ansari, J.—By an order, dated 14.2.2006, passed, under Sub-section (3) of Section 3 of the National Security Act, 1980 (in short, "the NSA, 1980"), the District Magistrate, West Tripura, Agartala, has placed the Petitioner in preventive detention. This order of detention was made pursuant to a report submitted by the Superintendent of Police, West Tripura, Agartala. The Petitioner was, on 14.2.2006, served with the order of detention along with the grounds on which the detention order was made and his order of detention has been approved by the State Government on 20.2.2006. Aggrieved by his detention, the Petitioner has challenged the same by making this application, under Article 226 of the Constitution, seeking issuance of a writ of habeas corpus commanding the Respondents to release the Petitioner from detention.

2. We have heard Mr. Somik Deb, learned Counsel for the Petitioner and Mr. P.K. Biswas learned Asst. Solicitor General, appearing for the Union of India. We have also heard Mr. S. Chakraborty learned Counsel for the State of Tripura.

3. While considering the present writ petition, what needs to be borne in mind

that the Constitution makes it mandatory for the High Courts and also the Supreme Court to zealously guard against the abuse of the liberty of persons by the State. While exercising this constitutional obligation the High Court may not be unmindful of the harmful consequences of the activities, which a detenu may be alleged to have been involved in. While, however, discharging the constitutional obligation to enforce the fundamental rights of a person, more particularly, when the right relates to his personal liberty, the Court cannot allow itself to be influenced by the conditions, which had led to the passing of an order of preventive detention against such a person and ignore, under such influence, the denial of the rights, which the Constitution and the laws enacted confer on such a detenu. Observed the Supreme Court, in *Kamleshkumar Ishwardas Patel Vs. Union of India (UOI) and Others*,

We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more specifically, the right to personal liberty, we cannot allow ourselves to be influenced by these considerations.

4. We cannot overlook the fact that the preventive detention is a serious encroachment on the right to personal liberty. When such a momentous power was given to the executive, the framers of the Constitution ensured that certain minimum safeguards be provided to detenu in order to ensure that his personal liberty is not violated except in accordance with law. No wonder, therefore, that the Supreme Court reminds all of us. In *Kamleshkumar Ishwardas Patel (Supra)*, that history of liberty is the history of procedural safeguards and the minimum safeguards, which are provided under Clauses (4) and (5) of Article 22, cannot be modulated on the basis of the nature of activities alleged against a detenu. From the observations made in *Kamleshkumar Ishwardas Patel (supra)*, it becomes abundantly clear that though detention of a person may be required in the interest of the State, the fact remains that since the preventive detention affects the liberty of the person detained, the mandatory requirements of the procedural safeguards provided by law to the detenu must be scrupulously followed and complied with and if the same is not done, the High Court would be duty bound to step in and set right the wrong, which the detention order inflicts on the detenu in violation of his valuable rights conferred by Article 22 and the laws enacted thereunder.

5. Reiterated the Supreme Court, in *Kamlesh Kumar Ishwardas Patel (supra)*, its earlier views in *Rattan Singh Vs. State of Punjab and Others*, that the laws of preventive detention afford only a modicum of safeguards to the persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up, it is essential that, at least, those safeguards, which the Constitution and the law provide, are not denied to the detenu. Thus, when the laws of preventive detention give to a detenu a right to make representation to the detaining authority or to the authority, which has the power to approve such

detention, it casts a corresponding duty on the detaining authority or the approving authority, as the case may be, to consider what a detenu has to say against his detention. The conferring of such a right on a detenu would be of no meaning if the detenu is not informed that the law, whereunder he has been detained, gives him the right to make representation against his detention to the authority or the authorities concerned. For this purpose, imperative it is that the detenu is informed of his right to make representation, which the preventive detention law may, in a given case, provide.

6. Bearing in mind what we have indicated above, when we turn to the case at hand, what attracts our attention, most prominently, is that while in the order of detention, the detenu was specifically informed of his right to make a representation to the District Magistrate, who passed the order of detention, as regards the detenu's right, conferred by Sub-section (1) of Section 8 of the NSA, 1980, to make representation to the State and also the Central Governments were not specifically communicated to the detenu inasmuch as the detention order reads, *inter alia*, thus:

It is mentioned that the detenu Sri Shyamal Das & Simul (34) S/O Sri Narendra Das of Bhattapukur, P/S West Agartala. Dist.-West Tripura may submit his representation to Central/State Government against this order of detention. Such representation may be submitted to the under signed for onward transmission to the Central/State Government. The detenu is also informed that he will get all reasonable opportunity for making representation against this order to the Central/State Government. He may therefore, state to the undersigned what opportunity he needs for this purpose. The detenu is also apprised of his right to make representation before the undersigned against this detention order.

(Emphasis is supplied)

7. In the case at hand, the detaining authority, as the detention order reveals, informed the detenu that he might submit his representation to the Central/State Government against the order of detention. The information, so conveyed, clearly meant that the detenu has an option and if he wishes, he may make a representation; whereas the law required the detaining authority to inform the detenu that not only that he may submit representation addressed to the Central Government or State Government, but that he has statutory and fundamental rights to make representation to the Central as well as the State Government, particularly, when the order of detention, passed by a District Magistrate, remains in force until the time he revokes it or the same is approved or disapproved by the State Government in exercise of its powers under Sub-section (4) of Section 3 of the NSA, 1980.

8. In short, the impugned order of detention, when read carefully, clearly reflects that the detention order merely conveyed to the detenu that he has the option to make representation to the State and/or the Central Government. The detention order, nowhere, states or informs the detenu that he has the right to make a

representation to the State and/or the Central Government.

9. We also notice that the order of detention did not inform the detenu that he had a right to make a representation to the Advisory Board too. The detention order merely states that the detenu has a right to be heard before the Advisory Board, for, the order of detention, in this regard, states, "The detenu is informed that he also has a right to be heard before the Advisory Board."

10. When a detenu has been given the right to make representation under the NSA, 1980, this is a valuable right of the detenu and it is the duty of the detaining authority to inform the detenu not only that he has a right to be heard by the Advisory Board, but that he has also a right, under the law, to make representation to the Advisory Board against his detention order.

11. In view of the fact that we are satisfied that the detenu, having not been informed that he had, under the law, the right to make representations to the State as well as the Central Government and/or that he has the right to make representation to the Advisory Board, has been denied these procedural safeguards, which are indefeasible in nature and such violation is, to our mind, enough to set aside the order of detention.

12. Be that as it may, there are some other important aspects of the present case, which we deem necessary to reflect on. While dealing with these aspects of the case, we would like to point out that in a given case, the investigating agency may not be able to submit charge-sheet against a person, who is alleged to be involved in a large number of illegal activities. There may also be cases, where the court, exercising criminal jurisdiction, may, on perusal of the materials collected by the investigating agency, discharge an accused. There may also be cases, wherein an accused is acquitted by the court. Can, in such cases, there be no order for preventive detention of such a person for his alleged criminal activities? While answering this crucial question, it is necessary to point out that the jurisdiction exercised for preventive detention and the jurisdiction exercised by the police or the courts, in dealing with the crimes, vary in many a ways. While it will not be correct to say that solely on the ground that a person has been discharged in a given criminal case, he may not be kept in detention for his involvement in such a case, even if the conditions precedent for attracting the provisions of preventive detention, under a given law, are found present, it will also be incorrect to say that termination of a proceeding in a criminal case, on identical facts, is of no consequence at all.

13. In short, discharge of a person or his acquittal in a criminal case or series of criminal cases is neither entirely irrelevant nor of no significance. The discharge or acquittal of an accused is an aspect. Which the detaining authority must take into account before the order of detention is passed, for, when a person, sought to be detained, already stands discharged or acquitted, very compelling reasons shall be present warranting such a person's preventive detention in respect of a crime or series of crimes of which he stands already acquitted of or already

stands discharged from. If notwithstanding such discharge or acquittal, a person still needs to be detained, the detaining authority owes the duty to satisfy, when questioned, that it had some valid material about such person's complicity in the criminal acts, which constituted the basis of the detention order. To put it differently, while the discharge or acquittal of a person cannot be a ground to interfere with his order of detention if the detention be for his involvement in the criminal activities, which he already stands discharged from or acquitted of, the fact remains that the detaining authority must satisfy itself and must be able to produce, when questioned, some valid materials about such person's complicity in the criminal acts, which constitute the basis of the detention order. When a detention order is made against a person for his criminal acts, which constitute the basis for passing of the order of detention, imperative it is for the detaining authority to reveal as to what materials have been considered by him, while passing the detention order. A reference may, in this regard, be made to *Sadhu Roy Vs. The State of West Bengal*, wherein the Supreme Court observed as follows:

8. There are a few vital facts which loom large in this context. One is that the court discharged the accused, the reason alleged in the counter being that:

The police submitted final report in those cases on January 6, 1972 and February 9, 1972 respectively not because there was no evidence against the Petitioner but because the detenu Petitioner being a dangerous person witnesses were afraid to depose against him in open court.

What is the impact of a discharge of the accused by the criminal court based on police reports on the validity of the detention order against the same person based on the same charge in the context of a contention of a non-application of the authority's mind? The two jurisdictions are different, the two jurisprudential principles diverge, the objects of enquiry and nature of mental search and satisfaction in the two processes vary. The argument that detention without trial, for long spells as in this instance, is undemocratic has its limitations in modern times when criminal individuals hold the community to ransom, although vigilant check of executive abuse becomes a paramount judicial necessity. We, as Judges and citizens, must remember that, in law as in life, the (Sic) of the quiet past are not adequate to the demands of the stormy present and the philosophy and strategy of preventive detention has come to stay. We may merely observe that we are not legally impressed with counsel's persistent point that solely or mainly because the Petitioner has been discharged in the two criminal cases he is entitled to be enlarged from preventive captivity.

9. Even so, it does not follow that the extreme view propounded by the counsel for the State that the termination of the proceedings in a criminal case on identical facts is of no consequence is sound. In this connection, we may draw attention to a few decisions of this Court cited at the Bar. Chandrachud J., speaking for the Court, recently observed in *Srilal Shaw v. State of W.B.* dealing with a situation somewhat like the one in this case, thus : SCC p. 338 : SCC

(Cri)p. 174, Para 5.

Again, in Noorchand case Gupta, J., delivering judgment for the Court, held SCC p. 308 : SCC (Cri.)p. 916, Para 5

We do not think it can be said that the fact that the Petitioner was discharged from the criminal cases is entirely irrelevant and of no significance: it is a circumstance which the detaining authority cannot altogether disregard.

(Emphasis supplied).

14. In the case at hand, the grounds of detention make references to West Agartala P.S. Case No. 170/2000, registered, on 28.8.2000, under Sections 148/149/302/307 IPC and 27 Arms Act and 3/5 E.S. Act. The order of detention, referring to the said Criminal case, states:

It appears from the FIR copy of West Agartala P/S. Case No. 170/2k dated 28/08/2k u/s 148/149/302/307 IPC and 27 Arms Act and 3/5 E.S. Act that on 28/08/2k at 1930 hrs complainant Sanjibur Rahman, S/O. Lt. Renu Miah Choudhury of West Ramnagar, P/S. West Agartala went to the tea stall of Manik Miah at Joypur and saw Sanjit Debnath, Hamid Miah, Samshu Miah and Rajjak Miah playing cards inside the shop of Manik Miah where 2/3 other people were also present. The complainant joined them for playing cards. At about 2015 hrs./2020 hrs suddenly Kutti Miah, Ramjan Miah, Ratan Miah, Bijoy Das @ Biju, Tapan Miah, Kushum Miah, Benu Miah, Majibur Rahman, S/O. Amirudding all of Joypur/Rajnagar and ? others attacked on the complainant and Sanjit Debnath by dao, bomb and gun and killed Sanjit Debnath at spot by sharp cutting weapon. The complainant Sanjibur Rahman managed to escaping the incident S.I. Narayan Saha of OC Battala TOP investigated the case.

During investigation I/O S.I. Narayan Saha examined witnesses and recorded their statement u/s 161 Code of Criminal Procedure on the basis of strong suspicion the subject Shymalam Das @ Sinul was arrested in c/w this case. After completion of investigation I/O S.I. Narayan Saha of the case submitted charge sheet vide C/S No. 219 dated 31/10/01 u/s 148/149/302/307 IPC/27 Arms Act and 3/6 E.S. Act against (1) Kutti Miah (2) Ratan Miah, (3) Ramjan Miah, (4) Jihutun Miah (5) Mujibur Rahman, S/O Md. Amiruddin Miah (6) Tapan Miah (7) Biswajit Singha (8) Binoy Das (9) Benu Miah (10) Kuddush Miah (11) Bhola Miah, But the subject Shvamal Das (a), Simul could not be charge sheeted as nobody

came forward to give evidence against the subject due to fear.

(Emphasis is added)

15. What is, now, of utmost importance to note is that though the order of detention clearly states that the Petitioner could not be charge-sheeted, it nevertheless accuses the Petitioner that nobody came forward to give evidence against him due to fear. There is neither any material on record nor was any material, if existed, communicated to the Petitioner to show as to how the opinion was formed by the detaining authority that it is because of the fear, which the Petitioner had succeeded, directly or indirectly, in generating in the minds of the witnesses concerned, that none had come forward to make statement against the detenu. When the investigation ended with the submission of charge-sheet, in West Agartala P.S. Case No. 170/2000 aforementioned, against many accused, but the police found no material even to submit charge-sheet against the Petitioner, it became the bounden duty of the authority concerned to lay before this Court, when the detention order is under challenge, to indicate that there were reasonable grounds or genuine apprehensions that it is because of the activities of the Petitioner that fear was created in the minds of the persons, who were witnesses and it was the impact of such fear, which did not permit the witnesses to speak, or make any statement, against the Petitioner. When the detaining authority claims to be satisfied that the charge-sheet could not be submitted as none came out to give evidence against the detenu due to fear, there must have been, if the accusation made by the sponsoring authority or the detaining authority were true, some materials in existence in this regard; but when no such materials could be made available to this Court, we are constrained to hold that before passing the detention order, the detaining authority had been furnished no material and had considered no material, which could reveal that it was because of fear that the witnesses concerned did not come forward to make statement against the present Petitioner. We may refer, in this regard, to the case of Bhut Nath Mete Vs. The State of West Bengal, the Apex Court observed (at page 657) thus:

...Detention power cannot be quietly used to subvert, supplant or to substitute the punitive law of the Penal Code. The immune expedient of throwing into a prison cell one whom the ordinary law would take care of, merely because it is irksome to undertake the inconvenience of proving guilt in court is unfair abuse. If, as the Petitioner has asserted, he was discharged because there was no material against him and not because witnesses were afraid to give evidence against him, there would be apparently no rational basis for the subjective satisfaction of the detaining authority. It is for the detaining authority to say that in spite of the discharge he was satisfied, on some valid material, about the Petitioner's complicity in the criminal acts which constitute the basis of the detention order. But, as stated already, the District Magistrate, Malda, who passed the order in this case, has not affirmed the affidavit that has been filed on behalf of the State.

16. What emerges from the above discussion is that if the detaining authority had any material to come to the conclusion that it was because of fear, which the present Petitioner had succeeded in generating in the mind of the witnesses concerned that the witnesses did not come forward to give evidence, such materials ought to have been furnished to the Petitioner and those materials ought to have been produced before this Court. If no such material really existed, when the detention order was passed, then, the detention order could not have been made. In either case, therefore, the detention order is bad in law. In this regard, it is of immense importance to note that it is not the case of the Respondents that the materials, based on which the interference that the fear, generated by the present Petitioner, had made the witnesses concerned refrain from speaking against the Petitioner, are privileged communications. Had it been the case of the Respondents that the materials, though available with the detaining authority, could not be divulged or revealed to the present Petitioner, due to legally permissible reasons, the situation would have, perhaps, been a little different and in such a case, this Court might have called for the materials and looked into the same to ascertain if the detaining authority had considered materials to satisfy itself as indicated hereinbefore. But when no such material was either revealed to the detenu or is produced before this Court, there can be no escape from the conclusion that the ground for detention to the effect that it is the fear generated by the Petitioner, which made the witnesses reluctant to come forward and make statements against the Petitioner, is without any basis or supporting material. Such a detention order cannot, but be regarded as an order suffering from non-application of mind and not bonafide. Moreover, when the materials have not been furnished to the detenu on the basis of which the opinion was formed by the detaining authority that "nobody came forward to give evidence against the subject due to fear.", the detenu cannot, but be held to have been seriously prejudiced.

17. The above impression that the detaining authority did not really apply its mind on the materials placed before it and acted entirely on the report of the Superintendent of Police, submitted in this regard, suggesting preventive detention of the detenu, gets strengthened from the fact that the grounds of detention reveal that the detaining authority has mechanically borrowed even the language used in the report of the Superintendent of Police and planted the same in the order of detention.

18. The above aspect of the impugned detention order becomes clear, when the grounds of detention are closely examined vis-a-vis the report of the sponsoring authority. The Superintendent of Police, West Tripura, as the sponsoring authority, enlisted several activities of the present Petitioner, which warranted, according to the sponsoring authority, preventive detention of the Petitioner. At Paragraph 3 under the heading of "Criminal Activities", the sponsoring authority stated:

It appears from the report submitted by OC West Agartala PS dated 6.1.06 that

the subject Sri Shyamal Das and Simul (34) S/O Sri Narendra Das of Bhattapukur, P/S West Agartala, Dist. West Tripura committed of series of crime at Agartala City area which are prejudicial to the maintenance of public order and also to the security of the state which is grave in nature and suggest a repetitive tendency.

(Emphasis is added)

19. In the grounds of detention too, the detaining authority stated:

It appears from the report submitted by OC West Agartala PS dated 6.1.06 that the subject Sri Shyamal Das @ Simul (34) S/O Sri Narendra Das of Bhattapukur, P/S. West Agartala, Dist-West Tripura committed of series of crime at Agartala City area which are prejudicial to the maintenance of public order and also to the security of the state which is grave in nature and suggest a repetitive tendency.

(Emphasis is added)

20. Apart from the fact that the language used by the sponsoring authority has been borrowed, as indicated hereinabove, by the detaining authority, but even the errors committed, in the language of the sponsoring authority, have been unmindfully carried forward and repeated by the detaining authority, when the detaining authority, states, "committed of series of crime at Agartala City area"

(Emphasis is added)

21. Similarly, in the last sub-Paragraph of Paragraph 6 under the heading Criminal Activities", the sponsoring authority stated:

From the statement of above witnesses it has been revealed that the witnesses identified the subject Shyamal Das @ Simul and Dipankar Saha, Kutti Miah and his two brother Pintu Miah, at the time of commission of the offence. The subject Shyamal Das @ Simul is held responsible for the crime.

22. In the last Sub-Paragraph of Paragraph 6 of the grounds for detention too, even the detaining authority borrows and plants the same language, as used by the sponsoring authority, for, the detaining authority states:

From the statement of above witnesses it has been revealed that the witnesses identified the subject Shyamal Das @ Simul and Dipankar Saha, Kutti Miah and his two brother Pintu Miah, at the time of commission of the offence. The subject Shyamal Das @ Simul is held responsible for the crime.

23. If the last sub-paragraph of Paragraph 6 of the report of the sponsoring authority as well as the last sub-paragraph of paragraph 6 of the grounds for detention are read carefully, it clearly transpires that the sponsoring authority did not disclose the name of the other brother of Pintu Miah and merely stated, "his two brother Pintu Miah". The detaining authority too, as already indicated hereinbefore, acted mechanically, when it repeated, in the grounds for detention, the same very words, "his two brother Pintu Miah", without disclosing as to which

other brother of Pintu Miah is involved with the detenu in his alleged criminal acts.

24. *Jai Singh and Others Vs. State of Jammu and Kashmir*, is one of the cases where the grounds of detention showed that it was a verbatim reproduction of the dossier submitted by the senior Superintendent of Police, Udhampur, to the District Magistrate requesting that the detention order may be issued. In the grounds of detention, except making some ornamental changes, the District Magistrate had made no other change and the Apex Court, in such a situation held:

We are afraid it is difficult to find greater proof of non-application of mind. The liberty of a subject is a serious matter and it is not to be trifled with in this casual, indifferent and routine manner.

25. *Rajesh Vashdev Adnani v. State of Maharashtra* reported in (2005) 8 SCC 390, is yet another case, wherein the Apex Court found that there were only small changes made to the proposal for detention made by the detaining authority, while passing the order of detention. Having regard to the case of *Jai Singh* (Supra), the Court, in *Rajesh Vashdev Adnani* (supra), observed thus:

To the aforementioned extent there has been no application of mind on the part of the second Respondent herein, and, thus, we are of the opinion that the impugned order of detention dated 3.11.2004 cannot be sustained.

26. The observations made in *Rajesh Vashdev Adnani* (supra) clearly indicate that when an order of detention is shown to have been passed without application of mind, the detention order cannot be allowed to stand good on record. A judicial application of mind is, in fact, sine qua non for passing of an order of detention.

27. There is yet another reason, which impels us to interfere with the detention of the Petitioner and it is this: an order of detention u/s 3 of the National Security Act, 1980, may be made on several grounds, such as, when the activities of a person prejudicially affects the maintenance of public order or the security of the State. These two grounds form different components of a detention order and when a detention order is passed on the ground that the activities of the detenu are prejudicial to the maintenance of public order or are prejudicial to the security of the State, there must be materials available before the detaining authority on the basis of which such interferences were drawn. When an order of detention makes an accusation that the activities of a detenu are prejudicial to the maintenance of the security of the State, the inference would be that such a material was available; but if no such material is made available, one has no option, but to hold that no such material really existed.

28. Keeping in view what has been indicated above, when we revert to the detention order, we notice that the order of detention states:

Whereas, in certain areas within the local limits of my jurisdiction as District

Magistrate of the West Tripura District, activities like murder, kidnapping, abduction, arson, dacoity, rape by groups of extremists and miscreants whose avowed objective is to create lawlessness in order to destabilize the Government have severely affected public order and security of the State.

29. A carefully reading of what has been mentioned in the detention order clearly reveals that the detention order was made for acts, which prejudicially affected public order as well as the security of the State. The expressions "public order" and "security of the State" do not carry the same meaning. The grounds of detention furnished to the detenu have absolutely no material to show that any of the activities of the detenu, even if believed, threatened the security of the State, for, the cases, wherein the detenu was allegedly involved, are cases, which relate to law and order situation and could, at best, be said to be a case of public order. In such circumstances, reference made by Mr. Somik Deb, learned Counsel for the Petitioner, to G.M. Shah Vs. State of Jammu and Kashmir, , is not entirely misplaced, for in G.M. Shah (Supra), the Apex Court held thus:

7. It is thus clear that none of the grounds supplied to the detenu falls within the scope of Clause (a) of Section 8(3) of the Act which defines the expression "acting in any manner prejudicial to the security of the State". It is further seen that even though it is stated in the grounds that the District Magistrate was of the view that the detenu remaining at large was prejudicial to the security of the State also, he did not make the order with a view to preventing him from acting in any manner prejudicial to the security of the State, A combined reading of the order of detention and the grounds furnished to the detenu shows that at the time when the order was made, the District Magistrate either had no material relevant to the security of the State on which he could act or even if he had information of those grounds, he did not propose to act on it. He, however, tried to support the order of detention by stating in the course of the grounds that by the detenu remaining at large, the security of the State was likely to be prejudice.

8. The expressions "law and order", "public order" and "security of the State" are distinct concepts though not always separate. Whereas every breach of peace may amount to disturbance of law and order, every such breach does not amount to disturbance of public order and every public disorder may not prejudicially affect the "security of the State". This is borne out from the observations made by Patanjali Sastri J. in the decision of this Court in Romesh Thapar v. State of Madras" which are as follows:

"As Stephen in his Criminal Law of England observes : "Unlawful assemblies, riots, insurrections, rebellions, levying of war, are offences which run into each other and are not capable of being marked off by perfectly defined boundaries. All of them have in common one feature, namely, that the normal tranquillity of a civilised society is in each of the cases mentioned disturbed either by actual force or at least by the show and threat of it. Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the

purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgment of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression, while the right of peaceable assembly Sub-Clause (a) and the right of association "Sub-Clause (c)" may be restricted under Clauses (3) and (4) of Article 19 in the interests of "public order", which in those clauses includes the security of the State. The differentiation is also noticeable in Entry 3 of List III (Concurrent List) of the Seventh Schedule, which refers to the "security of a State" and "maintenance of public order" as distinct or subjects of legislation. The Constitution thus requires a line to be drawn in the field of public order of tranquillity marking off, may be, 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.

9. As observed by Hidayatullah, J. (as he then was) in *Dr. Ram Manohar Lohia v. State of Bihar* one has to imagine three concentric circles, in order to understand the meaning and import of the above expressions. "Law and order" represents the largest circle within which is the next circle representing "public order" and the smallest circle represents "security of State". It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of State. It is in view of the above distinction, the Act defines the expressions "acting in any manner prejudicial to the security of the State" and "acting in any manner prejudicial to the maintenance of public order" separately. An order of detention made either on the basis that the detaining authority is satisfied that the person against whom the order is being made is acting in any manner prejudicial to the security of the State or on the basis that he is satisfied that such person is acting in any manner prejudicial to the maintenance of public order but which is attempted to be supported by placing reliance on both the basis in the grounds furnished to the detenu has to be held to be an illegal one vide decisions of this Court in *Bhupal Chandra Ghosh v. Arif Ali* and *Satya Brata Ghose v. Arif Ali*4.

30. Same as in the case of *G.M. Shah* (supra), it is clear from a combined reading of the order of detention and the grounds furnished to the detenu that at the time, when the order of detention was made, the District Magistrate either had no material, which could reflect that the detenu's activities were prejudicial to the security of the State or if the detaining authority had such materials, he

did not propose to consider them. In a situation, such as the present one, when there is not even an iota of material to show that the alleged activities of the detenu genuinely gave rise to an apprehension of threat to the security of the State, the order of detention cannot, but be described as the one suffering from non-application of mind.

31. Because of what have been discussed and pointed out above, as a whole, we have no hesitation in holding that the impugned order of detention is wholly illegal and can, by no means, be allowed to survive.

32. In the result and for the reasons discussed above, the impugned order of detention, dated 14.2.2006, is hereby set aside and quashed. The Petitioner is hereby directed to be released forthwith from preventive detention unless he is required to be detained in custody in connection with any other case.