

(1982) 03 DEL CK 0021

In the Delhi High Court

Case No : Criminal Writ No. 126 of 1981

Smt. Bimla Dewan

APPELLANT

Vs

The Lieutenant Governor, Delhi and others

RESPONDENT

Date of Decision : 04-03-1982

Acts Referred:

Citation : (1982) CriLJ 1095 : (1982) 21 DLT 341 : (1982) 3 DRJ 219

Hon'ble Judges : J.D. Jain, J;D.K. Kapur, J

Bench : Division Bench

Judgement

D.K. Kapur, J.—A Habeas Corpus petition under Art, 226 of the Constitution has been moved by the petitioner in connection with the detention of her husband under the National Security Act, 1980. It is claimed that the detention order is without jurisdiction, arbitrary, mala fide and a colourable exercise of power for ulterior and collateral reasons. The detention order is dated 25th September 1981, and the grounds have also been annexed to the petition. According to the petitioner, her husband has been conducting a business of running an eating house known as "Kamal Restaurant" the police officials in the locality have been seeking free entertainment and demanding gratification which the detenu has denied, and Therefore, the police officials have allegedly registered a number of false cases against him, but the detenu has always been acquitted or discharged in all of those cases.

2. It is also submitted that the name of the detenu was included in the Surveillance Register and a history sheet was also opened, but this action was struck down in Criminal Writ No. 66 of 1977, decided by Talwar J., on 14th April. 1980. It is claimed that in spite of the decision in that Writ Petition more false cases have been filed against the detenu.

3. In addition, on 18th August 1981, the police officers of Police Station Patel Nagar had sealed the restaurant and a show cause notice was also received on 22nd September 1981, as to why the Certificate of Registration should not be cancelled. This was the subject-matter of Writ Petn. No. 2307 of 1981, which was

also admitted and stay order passed.

4. It is further submitted that the detention order purports to be issued with the object of stopping the detenu from indulging in his alleged criminal activities which is not a ground for detention under the Act, and Therefore, the Act had been invoked for an ulterior purpose as any one indulging in criminal activities could be prosecuted under the normal penal laws. The National Security Act was not meant to detain citizens without trial in relation to offences in which they could be tried under the existing laws, hence the order was mala fide.

5. Principally, the writ petition is Therefore, based on the contention that a number of cases have been instituted against the petitioner's husband which all resulted in his acquittal and the provisions of the National Security Act are being misused for the purpose of punishing the petitioner's husband for alleged offences in which his conviction could not be secured through the normal procedure in court. This is allegedly a misuse of the machinery set up under the Act which is for quite a different purpose. It will be necessary to refer to the grounds of detention at a later stage, but it is more convenient now to examine the counter-affidavit which is of Shri P.S. Bhinder, the then Commissioner of Police, Delhi. In this affidavit, it is stated that the detention was necessary in view of the long criminal history of the detenu. A representation against the detention was turned down by the Lt. Governor but the matter had been placed before the Advisory Board whose orders were still awaited. (as on the date of the affidavit). According to the affidavit in reply, the detenu was a habitual law breaker running a restaurant which is the headquarter for nefarious criminal activities where cabaret dances were shown. It is also stated in the affidavit that the order of detention was necessitated in view of the past record and to prevent the detenu from indulging in criminal activities and thus in maintaining public order. It is stated among other things in the affidavit as under :-

"The criminal history of the detenu, as mentioned in the grounds of detention, goes to show that he has been a serious threat to the maintenance of public order and whenever any Police Officer or any other Government agency has tried to intervene in the matter he had assaulted, obstructed or attempted to murder those persons. The order of detention of the detenu was passed in these circumstances, because that was the only way to prevent him from acting in any manner prejudicial to the maintenance of public order. The allegations made against the Police are false." The question to be decided in this case is whether the detention order under challenge can be passed in the particular circumstances of this case, wherein the detenu was proceeded against in the normal Criminal Courts and acquitted or discharged in all the cases which have been filed and, where certain other cases are still under trial. Learned counsel for the petitioner contends that this is not the object of the Act and has referred to a number of decided cases in support of his contention. On the other hand, learned counsel for the State has referred to certain other cases where a different view has been taken or at least, there is a difference, because the detention have

been upheld. We have to really see whether the case of the petitioner's husband falls in one class of cases or the other; and even, to see whether there is any difference in the ratio of these cases, other than a difference resulting merely from the facts and circumstances being different in the various decisions. The majority of the decisions cited before us were under the Maintenance of the Internal Security Act, 1971 (hereinafter referred to as "MISA"). It was pointed out that Section 3 of the National Security Act, 1980, is somewhat similar to Section 3 of "MISA".

The power to detain under "MISA" was inter alia to prevent a person from acting in a manner prejudicial to the security of the State or the maintenance of public order. A similar power is contained in Section 3(2) of the National Security Act, 1980. In fact, the other powers of detention set out in S. 3 of the National Security Act, 1980, are also similar, if not the same as those set out in "MISA". As we are not concerned with the other question that may arise under either of the Acts, it may be observed here that we are only concerned with whether a person who has been repeatedly acquitted in the Criminal Court should be prevented from acting in a manner prejudicial to maintenance of public. The learned counsel for the petitioner argued that the reported judgments show that the maintenance of public order is quite a different thing from maintaining the peace and a mere breach of the criminal law cannot be equated to a breach or infraction of public order. As this point has been very elaborately argued before us and both learned counsel have presented their case with rare skill, it has been left to us to determine whether the order passed against the petitioner's husband can be said to be one passed to prevent him from acting "in a manner prejudicial to the maintenance of public order."

6. In *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, the order was passed under the defense of India Rules, 1062 R. 30. This Rule also allowed a detention to prevent a person from acting in a manner prejudicial to the maintenance of public order. The Court came to the conclusion by its majority view that there is a difference between "public order" and "law and order". It was held that the District Magistrate was facing a law and order problem which was different from a problem affecting "public order." Hidayatullah J. (stated in the main judgment as follows) :-

"One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle 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 the State." It may here be mentioned that the order itself stated that the detenu was being detained "on the ground that his being at large is prejudicial to the public safety and maintenance of public order." It can thus be seen that the order covered a ground outside the scope of the Act as "public safety" was not a ground for detention. However, the observations regarding the scope of the term "public order" have been relied upon by counsel for the

petitioner. It may also here be said that there were many earlier judgments of the Supreme Court showing the difference between "public order", public tranquillity and mere law and order which need not be referred to here. In *Nandalal Roy Vs. State of West Bengal*, the Court held that the act set out in the grounds of detention did fulfill the test of being contrary to public order as the act was a serious one of throwing bombs upon a Railway Police Party. The Court held that it was a disturbance of the public order within the meaning given in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . Similarly, another Bench of the Supreme Court held in *S.K. Kedar Vs. State of West Bengal*, , that the detenu when apprehended while removing material from the wagon attacked the Railway Protection Force with bombs and thus committed a breach of public order.

In *Kanu Biswas Vs. State of West Bengal*, the detenu attacked the husband and wife in a third class compartment and thus acted in a manner contrary to public order. In *Sasti alias Satish Chowdhary Vs. State of West Bengal*, , the accusation was of cutting electric wires and thus creating complete dislocation of electric supplies. This also was held to be a breach of public order. In *Mohd. Salim Khan Vs. Shri C.C. Bose and Another*, the petitioner was discharged from a criminal prosecution and yet detained on the same ground, but the detention order was upheld on the ground that there may not be enough evidence to maintain a conviction but still the detention could be ordered. In that case, the accusation was of hurling bombs at a bus belonging to a school.

7. On the other hand, in *Arun Ghosh Vs. State of West Bengal*, the order of detention was quashed on the ground that the acts attributed to the petitioner were such that they may be anti-social activities like riot, assault, etc., but they were confined mainly to certain individuals. This judgment by *Hidayatullah C.J.*, contained the following passage.

"Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies."

8. The line of distinction brought out by this example is illustrative of the difference between similar acts which may in the other affect public order generally. If the acts affect the community or have the potential of doing so, then they can be called breaches of public. However, if the acts are merely individual, in the sense, that they affect certain persons but do not trouble the rest of the community in any manner, then they cannot be termed to be breaches of public order.

9. With this judgment may be contrasted another decision of the Supreme Court in *Sadhu Roy v. State of West Bengal*, AIR 1975 SC 919 : 1975 Cri LJ 785 where a criminal case relating to theft of railway property was discharged because witnesses were afraid of giving evidence, but a detention order was passed. It was held that the Court must find out if the detention order had not been passed in the mala fide or a colourable manner. There was one vital point in the case which may make it distinguishable and that was that in the criminal case the petitioner's name was not in the First Information Report but was gathered in the course of investigation.

10. A number of other judgments were also cited at the Bar which need not be referred to as the point has been well and truly settled by a series of decisions of the Supreme Court. We would, Therefore adopt the test of seeing whether the acts attributed to the detenu are such that they can be said to affect public order, and if they are only breaches of law and order, then the detention will have to be held to be bad. The further question will be whether the fact that the petitioner has previously been detained under "MISA" and also the fact that he has been acquitted in majority of the cases mentioned in the detention order, will also have a very great bearing on the way in which the present petition has to be decided.

11. It is now necessary to set out the grounds of detention of the petitioner's husband in extenso so that the same can be examined. The grounds are as follows :-

"Office of the Commissioner of Police, Delhi

Grounds of detention of Shri Dev Raj Dewan alias Dewan alias Deva S/O Ishwar Dass R/O H. No. 53, Gadodia Road/146/2, Than Singh Nagar/Kamal Restaurant, Anand Parbhat, Delhi.

Dev Rai Dewan alias Deva S/O Ishwar Dass R/O H. No. 53 Gadodia Road/146/2, Than Singh Nagar/Kamal Restaurant, Anand Parbhat, Delhi, is an active bad character of P.S. Patel Nagar, Delhi who indulges in acts of violence, assault on public servant, murder, attempt to murder, riots, cases under the Excise Act and Arms Act and other criminal activities.

2. His criminal activities came to notice for the first time when he was arrested vide case FIR No. 194 dated 13-7-1965 U/S 307/353/32/224/225 IPC - P.S. Sarai Rohilla. In this case he was convicted on 12-4-1966 by the Court of Shri S.

R. Seth, Asstt. Sessions Judge, Delhi to under 1 1/2 years R.I. for the offence U/ S 225 IPC, but he was acquitted by the Court of Shri Mohan Lal, Addl. Sessions Judge, Delhi on 5-10-1966 and since then he has engaged himself in the commission of illegal acts and offences against person and property involving force and violence. He has been arrested in the criminal cases mentioned below :-

(i) He was arrested vide FIR No. 505 dated 31-12-1965 U/S 506 IPC-PS. Patel Nagar, Delhi when Shri Sita Ram R/O 17/70 Than Singh Nagar, Anand Parbhat, lodged a report against Dev Raj for threatening him with dire consequences. In this case he was arrested and was sent up for trial. He was convicted on 30-9-1966 by the Court of Shri A. C. Khair, MIC, Delhi to undergo 18 months RI, but on appeal he was acquitted on 22-12-1966 by the Court of Shri M. S. Joshi, ASJ, Delhi.

(ii) On 27-7-1968 he was arrested vide FIR No. 308 dated 27-7-1968 U/s 61-1-14 Excise Act-P.S. Sarai Rohilla when ASI Lal Chand of P.S. Sarai Rohilla arrested Dev Raj with 8 bottles of illicit liquor. He was sent up for trial but he was acquitted on 27-9-1969 by the Court of Sh., Saturaman, MIC, Delhi.

(iii) Dev Raj alias Deva was arrested vide case FIR No. 347 dated 25-10-1967 U/ S 353/342/186 IPC-P.S. Sarai Rohilla when he assaulted and obstructed one Sh. Hem Chand, Inspector of MCD while he was on duty and went to collect Corporation Tax. Dev Raj was arrested in this case and was sent up for trial. He was acquitted by the court of Sh. R. K. Goswami, MIC Delhi on 2-6-1969.

(iv) Dev Raj Dewan was arrested vide case FIR No. 280 dated 7-9-1967 U/S 325 IPC when on Shri Kasturi Lal r/o 9988. Sarai Rohilla reported that he was injured by Dev Raj, saying that he was a Police informer. The case was put in the Court and he was acquitted on 24-8-1968 by the Court of Shri S. R. Arya, MIC, Delhi.

(v) On 28-7-1968, he was arrested vide case FIR No. 310 dated 28-7-1968 U/S 25/54/89 Arms Act-P.S. Sarai Rohilla when a knife was recovered from his possession. In this case he was acquitted on 28-5-1969 by the Court of Shri R. K. Goswami, MIC, Delhi.

(vi) On 4-10-1968 SI Randhir Singh of Police Post Anand Parbhat, reported that he along with other staff on duty was obstructed and threatened with dire consequences by Dev Raj not to proceed towards Rohtak Road to check liquor. Dev Raj was arrested in this case vide FIR No. 435 dated 4-10-1968 U/S. 186/341/506-IPC-P.S. Patel Nagar and was sent up for trial. He was acquitted on 28-10-1971 by the Court of Smt. Kaushalya Pahwa, MIC, Delhi.

(vii) He was arrested vide FIR No. 405, dated 11-10-1969 U/S 61/1/14 Excise Act by Patel Nagar Police when SI Chandan Singh of Spl. Staff detected Car No. DLK-2311 containing illicit liquor. Dev Raj managed to escape leaving 8 tubes of illicit liquor He was later on arrested and the case was sent up for trial. In this case he was acquitted on 5-10-1971 by the Court of Smt. Kaushalya Pahwa, MIC, Delhi,

(viii) Dev Raj Dewan was arrested vide FIR No. 268 dated 26-3-1970 U/S 61-1-14 Excise Act-P.S. Sarai Rohilla while S. K. Niranjana Singh of P.S. Sarai Rohilla recovered 35 bottles of illicit liquor in a gunny bag. The accused Dev Raj managed to escape leaving the liquor, but he was later on arrested and the case was challenged. He was acquitted on 31-1-74 by the Court of Sh. M. L. Sahni, MIC, Delhi.

(ix) He was arrested vide case FIR No. 397 dated 12-5-1970 U/S 61-1-14 Excise Act-P.S. Sarai Rohilla, Delhi when eight bottles of illicit liquor were recovered from him. In this case he was acquitted on 8-7-1972 by the Court of Sh. M. K. Mishra, MIC, Delhi.

(x) Dev Raj Dewan was also arrested vide case FIR No. 430 dated 27-5-1970 U/S 61/1/14 Excise Act-P.S. Sarai Rohilla when three bottles of liquor were recovered from him and he was selling the same. He was, however, acquitted on 26-9-1973 by the Court of Sh. M. L. Sahani, MIC, Delhi.

(xi) On 28-5-1970, on an information, SI Randhir Singh detected Dev Raj with three bottles of Punjab Excise which he was selling. The accused Dev Raj ran away leaving the bottles of liquor. He was later on arrested vide case FIR No. 434 dated 28-5-1970 U/S 61/1/14 Excise Act-P.S. Sarai Rohilla, Delhi. The case was sent up for trial but he was acquitted on 24-8-1973 by the Court of Shri M. L. Sahani, MIC, Delhi.

(xii) He was arrested vide case FIR No. 640 dated 14-8-1970 U/S 506/353/332/147/148/149/307-IPC-P.S. Sarai Rohilla when Const. Sultan Singh, while on patrol duty with other staff was assaulted, seriously injured and threatened with dire consequences by Dev Raj and others saying that they would not allow their patrolling in that locality, as it was effecting the sale of their illicit liquor. Dev Raj was arrested and the case was sent up for trial. He was, however, acquitted on 20-9-1977 by the Court of Sh. B. B. Gupta, ASJ, Delhi.

(xiii) On 13-1-1971 ASI Hardev Singh detected Dev Raj who ran away leaving 3 bottles of Karnal Excise. He was arrested vide FIR No. 28 dated 13-1-1971 u/s 61/1/14 Excise Act-P.S. Sarai Rohilla, Delhi and the case was challenged. He was, however, acquitted on 29-9-1973 by the Court of Sh. M. L. Sahani, JMIC, Delhi.

(xiv) On 27-3-1971, H. C. Gurcharan Singh detected Dev Raj who ran away after throwing the sword which was in his possession. He was arrested vide case FIR No. 234 dated 27-3-1971 U/S 25/54/59 Arms Act-P.S. Sarai Rohilla, Delhi, and the case was sent up for trial. He was, however, acquitted on 1-10-1973 by the Court of Shri M. L. Sahani, JMIC, Delhi.

(xv) On 31-7-1971, one Shri Hans Raj S/O Dayal Chand r/o 61, Kamla Market reported that he was forcibly kept in a workshop, beaten and threatened with dire consequences. Dev Raj was arrested vide case FIR No. 517 dated 31-7-1971 U/S 365/347/506 IPC-P. S. Sarai Rohilla and the case was sent up for trial. He was acquitted on 9-11-1976 by the Court of Shri D. K. Saini, MM, Delhi.

(xvi) On 19-3-1972, Ram Mehar reported that while he was on patrolling along with other staff, Dev Raj and 4/5 others assaulted them beat and caused injuries with knife and Iron rods. They threatened with dire consequences if they tried to arrest them while selling liquor. Dev Raj was arrested vide FIR No. 214 dated 19-3-72 U/S 506/307/147/148/149/353/332/IPC-P.S. Sarai Rohilla, Delhi and the case was challenged .He was, however, acquitted on 30-10-1974 by the Court of Shri B. B. Gupta, ASJ, Delhi.

(xvii) On 2-4-1972 ASI Bhim Singh recovered four plastic canes containing illicit liquor from the house of Dev Raj and he was arrested vide case FIR No. 220 dated 2-4-1972 u/s 61/1/14 Excise Act-P.S. Patel Nagar. The case was sent up for trial but he was acquitted on 11-5-1976 by the Court of Shri Jagdish Parshad, MM, Delhi.

(xviii) Dev Raj Dewan was arrested vide case FIR No. 337 dated 20-5-1972 U/S 307/353/186/224/225/34 IPC-P.S. Patel Nagar. In this case when SI Ram Pat of P.S. Sarai Rohilla went to execute the warrant of arrest against Dev Raj, he was assaulted and injured by the said Dev Raj. He was arrested and the case was sent up for trial in the Court. He was acquitted, in this case on 12-9-1974 by the Court of Shri Jagdish Parshad, MM, Delhi.

(xix) On 23-9-1972, one Shri Ram S/O Kishan Lal r/o Chuna Mandi, Double Phatak, Sarai Rohilla, reported that Dev Raj along with 7/8 others inflicted injuries to his neighbour. Ram Singh. Dev Raj was arrested vide case FIR No. 486 dated 23-9-1972 U/S 307/147/148/324 IPC-P.S. Rly, Main, Delhi and the case was challenged .He was acquitted on compromise by the Court of Sh. S. C. Jain. ASJ, on 15-1-1974.

(xx) On 26-10-1972, Inspr. Bal Kishan SHO/Patel Nagar, with the help of Excise Staff raided and recovered two drums of illicit liquor from the room of Dev Raj who managed to escape. He was later on arrested vide case FIR No. 720 dated 26-10-1972 u/s 61/1/14 Excise Act-P.S. Patel Nagar and the case was sent up for trial. He was convicted on 9-7-1975 to undergo two years R.I. by the Court of Shri Jagdish Pd. M.M. but on appeal he was acquitted on 10-10-1975 by the Court of Shri D. C. Aggarwal, ASJ, Delhi.

(xxi) Dev Rai alias Deva was arrested vide FIR No. 495 dated 9-7-1972 U/S 365/347 IPC-P.S. Sarai Rohilla when Shri Bhagwat Singh R/O Jhuggi Harijan Colony, Anand Parbhat, reported that Dev Rai and others had abducted and confined his neighbour, Ram Singh. The case was sent up for trial, but he was acquitted on 4-4-1978 by the Court of Sh. I. C. Tewari, MM, Delhi.

(xxii) On 3-6-1973, one Shri Balwant Singh r/o Jhuggi No. J. 144, Harijan Basti, Sarai Rohilla, reported that due to previous enmity. Dev Rai along with eight others attacked and threatened with revolver for dire consequences. He was arrested vide case FIR No. 443 dated 3-6-1973 U/S 147/148/149/506 IPC-P.S. Patel Nagar, Delhi and the case was put in Court for trial. He was, however, acquitted on 26-6-1976 by the Court of Sh. M. L. Sahani, MM, Delhi.

(xxiii) He was arrested vide case FIR No. 186 dated 21-3-1974 u/s. 364/323/34-IPC-P.S. Patel Nagar, Delhi, in this case Sub-Inspector Satya Nand of Crime Branch was abducted and confined in a room by Dev Rai and others when he went to collect information for selling of illicit liquor. The case was sent to Court for trial, but he was discharged on 28-5-1975 by the Court of Sh. Jagdish Parshad, MM, Delhi.

(xxiv) He was arrested vide FIR No. 481 dated 25-7-1977 U/S 342/452/506 IPC-P.S. Patel Nagar when Shri Shadi Lal r/o. H. No. 50/1, Gali No. 5, Nai Basti. Anand Parbhat reported that he was forcibly confined in a room of Kamal Restaurant and was threatened with dire consequences by Dev Rai and others when he refused to vacate the rented quarter. Dev Rai, was arrested and was sent up for trial. He was acquitted on 12-1-79 by the Court of Shri Raghubir Singh, MM, Delhi.

(xxv) On 24-6-79, Inspr. B. L. Bhardwaj, SHO/Original Road raided Kamal Restaurant (owned by Dev Rai) and recovered whisky being served there. Dev Raj Dewan was arrested vide FIR No. 470 dated 24-8-79 u/s 61/1/14 Excise Act and sent up for trial. This case is pending trial in the Court of Sh. R. K. Yadav, MM. Delhi.

(xxvi) During the raid conducted by Inspr. B. L. Bhardwaj, SHO/Original Road, on 24-6-79, at Kamal Restaurant, a loaded English Revolver with 5 live cartridges were recovered from there. Dev Rai was arrested vide FIR No. 471 dt. 24-6-79 u/s 25/54/59 Arms Act-P.S. Patel Nagar, Delhi. This case is pending trial in the Court of Sh. G. P. Mittal. MM, Delhi.

(xxvii) Dev Raj Dewan alias Deva was arrested vide case FIR No. 493 dated 3-7-79 u/s 61/1/14 Excise Act-P.S. Patel Nagar, Delhi, while SI Nar Singh of P.P. Anand Parbhat along with Corporation Staff checked Kamal Restaurant and found Diplomat whisky being served there. The case was sent up for trial and the same is pending trial in the Court of Sh. R. K. Yadav, MM, Delhi and the next date has been fixed for 21-10-1981.

(xxviii) During the raid conducted by Inspr. B. L. Bhardwaj, SHO/P.S. Original Road, at the Kamal Restaurant on 23/24-6-1979 recovered a blue film having naked pictures for public circulation/exhibition. In this case Dev Raj was arrested vide FIR No. 479 dated 4-7-1979 U/S 292 IPC and the case was sent up for trial. He was, however, acquitted on 28-1-1981 by the Court of Shri G. P. Mittal, MM, Delhi.

(xxix) Dev Rai Dewan alias Dewa was arrested vide case FIR No. 1012 dated 28-12-1979 U/S 147/148/149/323/427 IPC-PS, Patel Nagar, Delhi when Shri Prem Kumar Narang, Municipal Councillor reported that when the Corporation Staff brought some persons for prosecution. Ram Singh came to rescue them, Later on Dev Rai along with other persons arrived there and started throwing stones, etc., resulting damage to the building. Dev Raj was arrested and the case was sent up for trial. This case is pending trial in the Court of Shri R. K. Yadav,

and the next date is fixed for 29-10-1981.

(xxx) Shrimati Parveen Kapoor w/o Sh. Vinod Kapoor r/o 17/155. Than Singh Nagar reported that her husband was murdered while coming back after seeing the cinema on 16-8-1981. She said that Dev Rai Dewan had conspired for this murder due to old enmity. A case vide FIR No. 519 dated 16-8-1981 U/S 302/34 IPC P.S. Patel Nagar was registered in this connection, Dev Raj got anticipatory bail from the Court of Sh. G. S. Dhanuka, Addl. Sessions Judge, Delhi.

This murder was committed due to old rivalry. Previously Bhagwana, the brother of Dev Rai alias Deva was murdered and in this case Ashok Kapoor brother of the deceased (Vinod Kapoor), is an accused. Deva got this murder committed to avenge the murder of Bhagwana. This case is pending investigation.

(xxxi) S.I. Ram Singh I/C of P.P. Anand Parbhat has sent a Kalandra (Complaint) U/S 107/150 Cr.P.C. against Dev Rai Dewan, apprehending danger to the life of Smt. Parveen Kapoor and Sheelawati Kapoor (family members of the deceased Vinod Kapoor) due to old rivalry and murder. This case is pending trial in the Court of Shri Ram Murti Sharma, ACP/Patel Nagar and the next date is fixed for 25-9-1981. D.D. entry No. 35 dated 28-8-1981 U/S 107/150 Cr.P.C.-P.P.-Anand Parbhat, was recorded in this connection.

(xxxii) On 10-9-1981, Smt. Sheelawati Kapoor w/o late Shri Daulat Ram r/o 17-155. Than Singh Nagar lodged a report against Dev Rai Dewan for threatening her with dire consequences when she went to Tis Hazari Court to see her son Ashok. Dev Rai alias Deva was arrested vide case FIR No. 818 dated 10-9-1981 U/S 506 IPC-P.S. Subzi Mandi, Delhi. This case is pending investigation.

3. The above activities of Dev Raj, Dewan alias Deva show that he is a desperate and dangerous character and has been acting in a manner which is prejudicial to the maintenance of public order. Till date he has been continuing his violent and criminal activities.

4. The above activities of Dev Rai alias Deva are hazardous to the community. In spite of his prosecution in a number of cases, Dev Rai Dewan alias Deva has not stopped his violent and anti-social criminal activities.

5. Keeping in view the above circumstances, his detention u/s. 3(2) of the National Security Act, 1980 has been considered essential in order to stop his criminal activities.

6. Dev Rai Dewan alias Deva is further informed that he has a right to make representation against his detention to the Lt. Governor, Delhi and the Advisory Board of the Delhi High Court."

12. This is a very lengthy document, but it gives details of numerous cases in which the detenu was prosecuted, though unsuccessfully. The acts attributed to the detenu were such that it cannot be said that they were mere infractions of

law and order and did not affect public order. Some of the acts were directed against persons exercising lawful authority; some of the acts were directed against Government servants and some of the acts involved illicit trade in liquor. Some of the acts were directed against the police, some against the Excise authorities and so on. It is another matter that the cases failed in Court. The real question is, whether the acts were such that they could be said to be prejudicial to the maintenance of public order ? It clearly appears that they were opposed to public order.

13. The real problem is whether these acts can be looked at after the detenu was acquitted. Several of the cases referred to earlier were cases in which criminal prosecutions were withdrawn and the person was detained.

14. The purpose of detention is not punishment, but prevention. The past conduct of the detenu is the only determinant for finding out whether a detention order is necessary. It appears to us that the Police Commissioner had to act on the basis of the past record. We are supported in this view by a recent judgment of the Supreme Court in *Firat Raza Khan Vs. State of Uttar Pradesh and Others*, wherein it was stated.

"The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order."

In this case, many of the acts attributed to the detenue are quite old, so a question might well arise whether there was any reformation of the detenu in the meantime. In this connection, it may be mentioned that several of the items mentioned above, such as (xxv), (xxvi), (xxvii) and (xxix) are pending in Court and many of other items are under investigation, so it cannot be said that the past history is stale and cannot be taken into consideration.

15. In the circumstances, we are of the view that the acts attributed to the detenu cannot be said to be unconnected with a breach of public order.

16. It is stated in the grounds of detention that the activities of the detenu show that he is a desperate and dangerous character and has been acting in a manner prejudicial to the maintenance of public order and he is continuing his activities.

17. In the circumstances, this inference from past conduct cannot be described as being mala fide, nor can it be said that the order has been passed for ulterior purposes.

18. We accordingly dismiss this Writ Petition.

19. Petition dismissed.