

**A.F.R.**  
**Judgment Reserved on : 24.08.2023**  
**Judgment Delivered on : 22.09.2023**

**Case :-** HABEAS CORPUS WRIT PETITION No. - 346 of 2022

**Petitioner :-** Munna Alias Shahanwaz Thru. Father Shabban Khan

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Lko. And Others

**Counsel for Petitioner :-** Tushar Bhushan, Saharsh Srivastava, Sheikh Wali Uz Zaman

**Counsel for Respondent :-** G.A., A.S.G.I., Dr. Pooja Singh

**Hon'ble Mrs. Sangeeta Chandra, J.**

**Hon'ble Narendra Kumar Johari, J.**

**(Delivered by Hon'ble Narendra Kumar Johari, J.)**

1. This writ petition has been filed by the petitioner with the following main prayers :-

"(i) issue a writ, order or direction in the nature of Certiorari, quashing the impugned detention order dated 24.09.2022 passed by the District Magistrate, Hardoi, contained in Annexure number 1 to this writ petition.

(ii) issue a writ, order or direction in the nature of Habeas Corpus, directing and commanding the opposite parties to forthwith release the petitioner.

(iii) quash the entire consequential proceedings."

2. The facts of the case are that on 10.08.2022 at around 6.00 P.M. when the informant Smt. Siddeswari Devi and her daughter Rajni were present in her house, the accused persons Maroof, Jubair, Arif, Shamshad, Munna, S/o Sabban Fauji along with other persons of muslim community entered into the house of informant and started molesting her daughter. When the informant opposed, the accused Munna fired on chest of informant. Fortunately, due to missing of cartridge, it could not be fired. The accused Munna inquired about the whereabouts of her son Nanhe as he was leading the tricolor flag yatra on the occasion of their festival (Muharram). The accused persons gave threat that they will kill her son. When the informant raised her voice for help the neighbours reached on the spot to rescue them. At that time the accused persons started firing shots. On intervention of the neighbours, the accused persons returned back by extending threat.

3. The F.I.R. of the occurrence was lodged at Police Station Pali, District Hardoi at 6.53 P.M. on the same day vide Case Crime No. 305/2022, under Section 452, 354, 307, 506 I.P.C. It has also been mentioned that Section 7/8 of the POCSO Act had also been added in the case. Subsequently the son of informant Nanhe lodged another F.I.R. on the same day at 7.47 P.M. in the same police station with the allegation that at 7.00 P.M. the accused persons Rijwan, Sainiyaz, Rahmat Ali @ Monu and Riyasat and other approximately 200 unknown persons came to the house of the informant Nanhe with the common intention to kill the informant. They started stone pelting and abusing. The accused Rizwan and some other persons opened fire but the family members of the informant somehow saved their lives. It has also been alleged that one day prior, the informant had received life threat near Imam Chowk Imambara. Accordingly the F.I.R. was registered in the same police station at 7.47 P.M. vide Crime No. 306/2022 under Sections 147, 148, 149, 336, 504, 506, 307 IPC and Section 7 Criminal Law Amendment Act. Further on 12.08.2022 at about 6.10 A.M. on the information of the informant the Station Officer of Police Station Pali, District Hardoi arrested accused Munna, S/o Sabban Fauji, Maruf, S/o Ismail, Shamshad, S/o Sajjad, Risalat, S/o Salamat, Sainiyaz, S/o Sabban. The police persons recovered two country made pistols of .315 Bore and .32 Bore along with two cartridges from the possession of Munna. He could not produce the licence of firearms. The Station Officer, Police Station Pali, District Hardoi arrested them and lodged the F.I.R. under Section 3/25 Arms Act vide Crime No. 307/2022 against accused Munna @ Shahanwaz.

4. It is revealed from the record that the Incharge Officer of L.I.U., District Hardoi submitted a report dated 16.08.2022 to the Superintendent of Police, Hardoi that at the time of occurrence, accused Munna was moving around with firearms in his both the hands. Due to his aggravating action a situation of chaos engulfed the locality, which resulted in a communally sensitive situation in the area. The Superintendent of Police, Hardoi on 17.08.2022 gave a direction to Incharge Officer of Police Station Pali to arrange and deploy proper police force in the area to maintain peace and harmony and also forwarded his direction to Circle Officer, Shahabad and Additional Superintendent of Police (West), Hardoi. Further, the Station House Officer of Police Station Pali, submitted his report on 19.09.2022. Thereafter, the Superintendent of Police, Hardoi prepared his report

regarding the occurrence and prevailing situation in the area and forwarded the same to District Magistrate, Hardoi with the prayer to initiate action against accused Munna @ Shahnawaz under the Act, 1980 on 20.09.2022. The District Magistrate, Hardoi considered the matter thoroughly, ascertained the grounds of detention and passed the order of detention against petitioner dated 24.09.2022 under Section 3 (2) of the Act, 1980. The detention order has been received in jail office on 25.09.2022 which was served on the detenu on the same day.

5. The detenu has submitted his representation dated 05.10.2022 in the office of Jail Superintendent on 06.10.2022 along with its copy to Chairman, Advisory Board, Secretary, Home, Central Government, New Delhi, Secretary (Home), Government of U.P., Lucknow, District Magistrate, Hardoi which were transmitted to District Magistrate by Jail Superintendent on the same day i.e. on 06.10.2022.

6. The District Magistrate, Hardoi considered the representation of the detenu and rejected the same on 07.10.2022. He communicated his rejection order to the Jail Superintendent on 07.10.2022, which was communicated to the detenu on the same day.

7. The State Government approved the detention order dated 24.09.2022 on 30.09.2022. The aforesaid rejection approval order was received by Jail Superintendent on 13.10.2022 through the District Magistrate, Hardoi (the State Government has approved the detention order in 05 days). The detenu has been communicated by the Jail Superintendent regarding the aforesaid approval order on 13.10.2022.

8. Further, the State Government while rejecting the representation of the detenu communicated the same on 20.10.2022 through Radiogram also which was received by the office of Jail Superintendent on 21.10.2022. The same has been communicated to the detenu on the same day.

9. The Central Government also rejected the representation of the petitioner/detenu and sent the radiogram on 26.10.2022 which was received in the office of jail Superintendent on 27.10.2022. Jail Superintendent has communicated the rejection order to the detenu on 27.10.2022 itself.

10. The representation of detenu dated 05.10.2022 along with parwise comments of detaining authority were received by the

concerned department of the State Government on 18.10.2022 from where the same was sent to Hon'ble Advisory Board, Lucknow.

11. The letter of Hon'ble Advisory Board dated 21.10.2022 regarding hearing of the case along with letter of District Magistrate, Hardoi dated 21.11.2022 was received in the office of Jail Superintendent on 01.10.2022 itself. Hon'ble Advisory Board had fixed 03.11.2022 for hearing of the accused. The letter of Advisory Board was also communicated to the detenu on the same day. The detenu appeared before the Advisory Board along with his Pairokar Islam Khan on 03.11.2022.

12. Hon'ble Advisory Board after hearing had not found any ground for revocation of the detention order and informed its decision to the State Government vide letter dated 07.11.2022.

13. It has further been shown in the counter affidavit of the State Government that once again the State Government examined the case of petitioner afresh and by considering the opinion of the U.P. Advisory Board and after due consideration the State Government took a decision to confirm the detention order and also for keeping the petitioner under detention further for a period of three months tentatively from the date of actual detention of the petitioner (till 24.11.2022). The aforesaid extension order has been communicated to the detenu on the same date by Jail authorities. Again the State Government vide order dated 22.12.2022 extended the period of detention tentatively for the period of 06 months from the date of detention (24.03.2023). The said extension order has been duly communicated to the petitioner. The State Government by its letter dated 16.06.2023 extended the period of detention tentatively for the period of 12 months from the date of detention.

14. Learned counsel for the petitioner has argued that the sole ground for detention as it has been mentioned in the grounds of detention of the Sponsoring Authority are the three criminal cases i.e., Case Crime No.305/2022, Case Crime No.306/2022 and Case Crime No. 307/2022. In the occurrence no injury has been caused to either informant or any member of informant's family. In her statement under Section 161 and 164 Cr.PC. the daughter of informant (Crime No.305/2022) has stated that one of the accused Maruf along with the petitioner and other persons came to their house and Maruf touched and

grabbed her hand. The allegation was against Maruf only, hence the petitioner has wrongly been charged under Section 7/8 of the POCSO Act in connection with the Case Crime No.305/2022. So far as the Case Crime No.306/2022 is concerned, the petitioner is not named in the F.I.R.

15. It has further been argued that the witnesses, namely, Pradeep Kumar, Sandeep Verma, Sudhir, Santosh Rastogi, Nikki Rastogi, Laxman Rastogi, under Section 161 Cr.P.C. have stated that on the date of incident at about 6.00 P.M. near the house of informant a heated argument took place between Nanhe and some persons belonging to the Muslim community. The date was the eve of Moharram and there was a heavy crowd on the road. An objection was made by the people on the fast driving of motorcycle by Nanhe. Regarding case crime no. 306/2022 the witness Ram Lakhan, Ashish Rastogi, Akashdeep, Kanhaiya Lal, Virendra Kumar, Aditya Kumar, Gaurish Kumar, Raksh Pal and Jugal Kishore in their statement under Section 161 Cr.P.C. have not taken the name of petitioner, rather they have stated that there were so many boys of Muslim community whom they recognize by face but they did not know their names. The Police has falsely implicated the petitioner in the case under Arms Act also. The firearm in case crime no.307/2022 has been planted by the police themselves. The detaining authority has not given any cogent reason justifying the preventive detention of the petitioner. There is no cogent material before the detaining authority to arrive at the satisfaction that the detenu is likely to be released from the custody in near future and taking into account the nature of antecedent, activity of the detenu there is likelihood that if he is released from the custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from such activities.

16. It has been further argued by learned counsel for petitioner that the alleged incident was an offence against one individual which may affect the "law and order" situation but it does not affect the "public order" so as to attract the provisions of Section 3 (2) of the Act, 1980. The incident took place on 10.08.2022, whereas the detention order has been passed against petitioner on 22.09.2022 which has no proximity, therefore, detention order was neither warranted nor justified. The copy of the bail order dated 12.09.2022 had not been provided to the petitioner which vitiates the detention order. The petitioner has no criminal history. The same has not been considered by the Detaining

Authority. There is no proof regarding the probability of the detinue acting similarly in future or repetitive tendency or inclination on the part of the detinue to act likewise in future. There was no material before the Detaining authority to form a valid subjective satisfaction that petitioner is likely to be released from jail and once the petitioner is released, he would again indulge in activities that would be prejudicial to the maintenance of the public order. The detaining authority has not applied his mind. He has copied the proposal. The present case is not a case of disturbance of public order as it does not disturb the society to the extent of causing a general disturbance of public tranquility and is not suggestive of a repetitive tendency or inclination on the part of the petitioner.

17. It has also been argued that the local police under the political pressure and machinery has arrested the petitioner and sent him to jail on 12.09.2022. The petitioner is innocent and has not committed any criminal offence. He has been falsely implicated in the aforesaid three criminal cases. At present the petitioner is pursuing his B.A. Final year course from Bareilly and is also working in a private construction company at Hardoi. The detention order has not been passed against any of the named accused in case crime no. 306/2022. The representation of the petitioner was neither dealt with promptly nor with sense of urgency which is in violation of Article 22(5) of the Constitution of India. The petitioner is sole breadwinner of his family.

18. Learned counsel for the petitioner finally submitted that by way of an additional affidavit the petitioner has challenged the fresh detention order dated 17.11.2022 against the petitioner by which the detention has been extended for a period of three months tentatively. It is a subsequent development. Therefore, the impugned order dated 24.09.2022 is liable to be quashed.

19. Learned counsel for the petitioner in support of his case has placed reliance upon the following case laws :-

(i) ***Prakash Chandra Yadav @ Mungeri Yadav Vs. The State of Jharkhand & others, Civil Appeal No. 4324 of 2023*** [arising out of SLP (C) No. 5331 of 2023, decided on 10.07.2023 by Hon'ble Supreme Court]

(ii) ***Deepu Alias Kuldeep Yadav Vs. Union of India and 5 others*** [Habeas Corpus Writ Petition No.25783 of 2017, decided by a co-ordinate bench of this Court on 06.11.2017]

(iii) ***Sonu @ Mohd. Ishtiyaq through mother Shameem Bano Vs. Union of India and others*** [Habeas Corpus No.11132 of 2021, decided by a co-ordinate bench of this Court on 01.11.2021]

(iv) ***Abhayraj Gupta Vs. Superintendent, Central Jail, Bareilly [E-Habeas Corpus Writ Petition No.362 of 2021,*** decided by a co-ordinate bench of this Court on 23.12.2021]

20. In reply of the arguments of learned counsel for the petitioner, learned A.G.A. Shri Anurag Verma, on behalf of opposite party No.2, has argued that the detention order dated 24.09.2022 has been passed strictly in conformity with the provisions of the Act, 1980. The detention order dated 24.09.2022 has been served on detinue on 25.09.2022. The Station House Officer of Police Station Pali, District Hardoi forwarded the report dated 19.09.2022 to Superintendent of Police, Hardoi. Thereafter, the Superintendent of Police has submitted his proposal to opposite party No.2 for taking action against the petitioner under the preventive detention. The proposal dated 20.09.2022 was considered by the District Magistrate, Hardoi in a clear and objective manner. Thereafter, the order dated 24.09.2022 was passed by him in accordance with law. The representation dated 05.10.2022 preferred by the petitioner was considered and decided by the District Magistrate objectively and promptly on 07.10.2022, i.e. in one day as the proposal was received in office of District Magistrate on 06.10.2022 only. As a matter of fact the son of the informant Nanhe was leading the tricolor Yatra which is not illegal. On the date of occurrence at the eve of Moharram, the accused persons opposed Nanhe who was leading the yatra. In furtherance of the protest the persons of the other community including petitioner attacked at the house of Nanhe regarding which the F.I.R. under Case Crime No.305/2022 was lodged in the police station concerned. Aggrieved by the aforesaid F.I.R., again the persons of the other community including the detinue aimed the house of Nanhe with stone pelting in the area and committed the offensive act regarding which the F.I.R. under Case Crime No.306/2022 was lodged. In the wake of the two consequential offences, a sense of fear and terror gripped the residents of the Kasba Pali, as a result of which the public order was severely jeopardized. The police after investigation has submitted charge

sheet against petitioner in all the aforesaid three cases in the competent court.

21. It has also been argued by learned A.G.A. that as far as the crime No.306/2022 is concerned, the name of the detenu has been discovered in the course of investigation with other co-accused persons. The witnesses in their statement under Sections 161 Cr.P.C. and the victim under Section 164 Cr.P.C. have supported the story of the prosecution. The petitioner was actively involved in commission of the offence along with other co-accused persons. The District Magistrate, Hardoi has duly applied his mind to the report of the Superintendent of Police, Hardoi and having arrived at a subjective satisfaction has invoked the provisions of National Security Act against the petitioner without any bias or prejudice. By the act of petitioner and other accused persons a sense of fear and terror gripped in the minds of the residents of Kasba Pali and adjoining areas and tension escalated amongst the members of two different religious community as a result of rioting and indiscriminate pelting of stones. The public order was adversely jeopardized as a result of criminal activities of the petitioner including provoking the persons of his community by showing his pistols in his both the hands. As a result, the additional police force from the various police stations coupled with the team of PAC were deployed and various administrative officers were involved to maintain constant vigil over the situation for many days, which was duly ascertained by the District Magistrate, Hardoi from a perusal of the report and proposal sent by the Superintendent of Police, Hardoi. Thereafter, the petitioner was making frantic efforts to secure bail and, therefore, the District Magistrate, Hardoi arrived at a subjective satisfaction that enlargement of the petitioner on bail was likely to further jeopardize the public order. After considering the material properly the detention order dated 24.09.2022 was passed by the opposite party No.2 which in turn was subsequently ratified by the State Government vide order dated 30.09.2022. The Hon'ble Advisory Board also did not find any ground for revocation of the order. The Central Government also after considering the detention order at various levels, rejected the representation of the detenu for revocation of the detention order.

22. Learned counsel further submitted that public order is synonymous to public safety and tranquility. From the grounds of detention mentioned by the District Magistrate it is evidently clear that the offence committed by the petitioner was not merely disturbance in



'law and order' situation but it was disturbance in 'public order' situation therefore, the detaining authority was compelled to invoke the provisions of the National Security Act. The residents of the area became fear stricken because of daring incident committed by the petitioner and other persons of his group which caused tension and panic amongst two different communities. The petition being misconceived has no force and is liable to be dismissed.

23. Shri D.S. Rana, learned Addl. A.G. has argued for opposite party no.4 that the petitioner was detained in jail in pursuance to the order of Remand Magistrate, Hardoi under Case Crime No.307/2022, 305/2022 and 306/2022 and on getting the bail order of the courts concerned the petitioner was released on bail on 01.10.2022 thereafter he was detained under the provisions of National Security Act. Learned counsel has further submitted that the detention order dated 24.09.2022 along with grounds of detention was received in the jail office on 25.09.2022 by the I.O. which was communicated to accused on same day and service report was sent to District Magistrate, Hardoi on same day. Further approval order of detention order which was passed by the Under Secretary, Home Department, Government of U.P. dated 30.09.2022 was received through radiogram on the same day and the above order has been communicated to the detinue on 30.09.2022 itself and its service report has been sent to the State Government on the same date. The detinue has provided his representation dated 05.10.2022 against the detention order dated 24.09.2022 along with copies for Hon'ble Advisory Board, State Government, Central Government and the District Magistrate, Hardoi was provided in the office of Jail Superintendent on 06.10.2022 which was sent by the Jail Superintendent to District Magistrate, Hardoi on the same day. Jail Superintendent further on 07.10.2022 received letter of District Magistrate, Hardoi regarding the rejection of representation. The aforesaid rejection order has been communicated to detinue on the same day and the service report has been sent to the District Magistrate, Hardoi on 08.12.2022. The State Government also approved the detention order on 30.09.2022 and the above approval order through the District Magistrate, Hardoi was received in the office of Jail Superintendent on 13.10.2022 and the order has been communicated to the detinue on the same day, i.e. on 13.10.2022. The information of receiving has also been sent to concerned authorities on 13.10.2022 itself. Further the jail office received the telegram of State Government dated 20.10.2022 regarding

the rejection of representation passed by under Secretary (Home Department), Government of U.P., Lucknow on 21.10.2022 which was communicated to detenu and the information of receiving has been sent to the concerned on the same day.

24. Learned counsel has further argued that the Jail authorities have received the telegram dated 26.10.2022 regarding the rejection of representation of detenu by the Central Government on 27.10.2022. The aforesaid rejection order was communicated to the detenu on the same date and the receiving has been communicated to the concerned. The jail office also received the letter of District Magistrate, Hardoi along with letter of Senior Registrar, Hon'ble Advisory Board, Lucknow dated 21.10.2022 on 01.11.2022 in his office. The Jail Superintendent has communicated the contents of letter regarding the date of hearing to detenu on same date. The Jail Superintendent demanded the police force to present the detenu before the Hon'ble Advisory Board. Jail Superintendent also provided the facility of PCO to detenu for his talk with his family members. On 02.11.2022 the Pairokar of the detenu submitted copy of his Aadhar Card and Electoral Card to the office of Jail Superintendent, which was sent by Jail Superintendent to the District Magistrate, Hardoi on the same date. The Jail Superintendent further sent the detenu to Advisory Board under police custody on 03.11.2022. Learned counsel for opposite party No.4 has further submitted that the jail office has received the information through radiogram regarding extension of detention order on 17.11.2022 and the letter of the State Government to the same effect on 21.11.2022 and radiogram dated 22.12.2022 which was received in the office of Jail Superintendent on 23.12.2022 was communicated to the detenu on the same date. Further the letter of State Government dated 22.12.2022 which was received in the office of Jail Superintendent on 30.12.2022 regarding the extension of period of detention has also been communicated to the detenu on 30.12.2022.

25. Learned A.G.A. Shri S.N. Tilhari on behalf of the opposite party No.1 submitted that the detention order dated 24.09.2022, grounds of detention and all other related documents forwarded by the District Magistrate, Hardoi were received by the State Government on 26.09.2022. After examining other aspect of the case of the petitioner in detail the State Government approved the detention order on 29.09.2022

(within 03 days) and such approval was communicated by the State Government through radiogram and letter dated 30.09.2022 to the petitioner which has been communicated to him on 30.09.2023 itself.

26. It has also been argued by him that apart from that, the aforesaid detention order as well as documents attached were also sent to the Central Government by speed post on 03.10.2022 (within 07 days). Accordingly, there is no violation of Section 3 (4) and 3 (5) of the Act, 1980. The State Government also forwarded the aforesaid papers to the U.P. Advisory Board, Lucknow on 06.10.2022 (within 03 days) in accordance with the provisions of Section 11 of the Act, 1980. The representation of the petitioner along with parawise comments of Assessing Authority was received in the office/section of State Government on 18.10.2022 along with letter of District Magistrate, Hardoi dated 07.10.2022. The State Government sent the copy of the same to the Central Government and to the U.P. Advisory Board in separate letters on same date, i.e. on 18.10.2022. The representation of the detenu dated 05.10.2022 and other documents which were received by the State Government on 18.10.2022 were sent to the Home (Gopan) Anubhag-5 on 19.10.2022 for examination/consideration which was examined by the Anubhag on the same date. The Joint Secretary and the Special Secretary also examined the representation and papers on same date, i.e. on 19.10.2023, the Secretary, Government of U.P., Lucknow. Thereafter, Additional Chief Secretary, Government of U.P., Lucknow examined the papers on 20.10.2022. After that the record was submitted to the higher authorities for final order of the State Government and after due consideration the said representation was finally rejected by the State Government on 20.10.2022 (within 02 days of its receiving). The said rejection order was also communicated to the District Authorities through radiogram on 20.10.2022 which was communicated to the petitioner on 21.10.2022. Learned counsel further submitted that the U.P. Advisory Board, Lucknow vide its letter dated 21.10.2022 informed the State Government that the case of the petitioner would be taken up for

hearing on 03.11.2022. The above fact was communicated to the District Authorities through radiogram dated 31.10.2022 who communicated the same to the petitioner. The petitioner appeared before the Hon'ble Advisory Board and took part in the proceedings through his next friend.

27. Hon'ble Advisory Board, after hearing the case, sent its report along with the information that there is sufficient cause for preventive detention of the petitioner under the Act, 1980. The said report and the record of the case were received in the concerned section of the State Government on 10.11.2022 through letter dated 07.11.2022 of the Registrar, U.P. Advisory Board (Detention) (within 07 weeks from the date of detention). Accordingly, there is no violation of Section 11 (1) of the Act, 1980. The State Government after receiving the report of Advisory Board, examined the case of the petitioner afresh and took decision to confirm the detention order for the further period of 03 months tentatively from the date of actual detention. The extension order was communicated through radiogram and letter dated 17.11.2022 which was communicated to the petitioner through concerned authority.

28. Dr. Pooja Singh, learned counsel for the Union of India/opposite party No. 3 argued that a copy of the representation dated 05.10.2022 of the detenu along with parawise comments of the detaining authority dated 07.10.2022 was received in the concerned section of the Ministry of Home Affairs on 19.10.2022 (sent by State Government vide letter dated 18.10.2022). The representation along with parawise comments of the detaining authority was examined at the level of concerned section and the file was submitted to the Under Secretary on 20.10.2022 (in 01 day). The Under Secretary further examined the matter in detail and forwarded the same with her comment to the Deputy Secretary on 21.10.2022, who after examining the same, forwarded the record to the Joint Secretary on 21.10.2022 (in 01 day). The Joint Secretary also examined the same and forwarded the same to the Union Home Secretary on 22.10.2022 (in 01 day). The Union Home Secretary

having carefully gone through the record including the grounds of detention and the representation of the detenu with comments of the Detaining Authority and concluded that there is no ground for revocation of the detention order. Accordingly, he rejected the representation and sent the file back to the Joint Secretary on 22.10.2022. Thereafter, there was holiday on 23.10.2023 and 24.10.2022. The file reached in the section concerned through aforesaid various levels on 26.10.2022 and the authority concerned were informed by the wireless message dated 26.10.2022 about the aforesaid rejection order. The same was communicated to the detenu on 27.10.2022 (in 01 day).

29. Learned counsel for the Union of India has further submitted that the representation of the detenu dated 05.10.2022 was duly considered by the Central Government at various levels and not acceded by the Central Government. The copy of wireless message dated 26.10.2022 has been annexed as Annexure No.1 with the counter affidavit of the opposite party No.3.

30. Learned counsel for the opposite parties have placed reliance upon following judgments :-

- (i) **Arun Ghosh v. State of West Bengal, (1070) 1 SCC 98**
- (ii) **Union of India v. Yumnam Anand M. Alias Bocha Alias Kora Alias Suraj and another, (2007) 10 SCC 190**
- (iii) **Frances Coralie Mullin v. W.G. Khambra, 1980 DGLS (SC) 97 : 1980 (2) SCC 275**
- (iv) **Ram Ranjan Chatterjee v. State of West Bengal, (1975) 4 SCC 143**
- (v) **Magan Gope v. State of West Bengal, (1975) 1 SCC 415**
- (vi) **Ibrahim Nazeer v. State of T.N. and another, (2006) 6 SCC 64**

31. We have heard the arguments of learned counsel for the petitioner, learned A.G.A. for the State/District Magistrate, Hardoi, Jail Superintendent, District Jail, Hardoi, the State of U.P./opposite party No.1 and learned counsel for the Union of India/opposite party No.3 and perused the record thoroughly.

32. Learned counsel for the petitioner assailed the detention order dated 24.09.2022 on the following main grounds :-

(i) the petitioner had never acted in any manner prejudicial to the maintenance of the public order.

(ii) The incident according to the F.I.R. took place on 10.08.2022 whereas the detention order has been passed on 24.09.2022. There is no proximity for invoking the provisions of the Act, 1980 after approximately 45 days of the incident.

(iii) The bail order of the concerned criminal cases were not supplied to the petitioner by detaining authority.

(iv) The petitioner was having no criminal antecedent. He was not named in the F.I.R. No.306/2022, his bail application in Case Crime No.307/22 had not been allowed and he was in jail, as such, there was no material before the Detaining Authority on the basis of which a valid subjective satisfaction could be formed to pass a detention order. The sponsoring authority has not applied his one mind and just copied the proposal.

33. Before entering into the discussion, we would like to reproduce the relevant provision of the Act, 1980.

**"3. Power to make orders detaining certain persons.** - (1) The Central Government or the State Government may,—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.

—.....

(3) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (2), exercise the powers conferred by the said sub-section:

Provided.....

(4) .....

(5) ....."

34. According to the above provision the detention order can be passed by the Central Government, **State Government/District Magistrate/Commissioner of Police** on their satisfaction with respect to any person with a view to preventing him from acting in any manner prejudicial to the society of the State or prejudicial to maintenance of the public order and the aforesaid order can be passed having regard to the situation prevailing or likely to prevail in the concerned area. So, on the mere apprehension, the detention order can be passed after considering the prevailing circumstances and situations.

35. Learned counsel for the petitioner has argued that perusal of the F.I.R. indicates that there was situation which may affect the law and order situation of the area but not the public order, therefore, the detention order is bad in the eye of law.

It has been mentioned by the Superintendent of Police, Hardoi in his proposal dated 20.09.2022 that the date of occurrence was the eve of festival Moharram and it has been shown that so many persons of muslim community had gathered on the road and the son of the informant (Case Crime No.305/2022) was leading the Tiranga Yatra and some dispute arose between the petitioner and Nanhe. Consequently, the petitioner along with his colleagues and the persons of Muslim community entered into the house of Nanhe and committed the offence. Within 53 minutes from the time of occurrence, the informant reached at the police station concerned to lodge her F.I.R. The distance of the police

station from the place of occurrence is 01 Km. After the aforesaid occurrence and after lodging the F.I.R. of the above occurrence on the same evening i.e. 10.08.2022 the accused along with other members of his community again attacked the house of the informant Siddheswari Devi with their common intention to kill. Accordingly, Shahanwaz and some other persons opened fire. They started abusing and along with them approximately 200 persons of their community started stone pelting. It was apparent that second occurrence (Crime No.306/2022) took place in furtherance of first occurrence. Taking into consideration the contents of the F.I.R.s, Crime No.305/2022 and 306/2022, it can be concluded that both the occurrences took place only because of communal feelings being aroused. It also appears that the accused persons became annoyed after lodging the first F.I.R. and committed the second offence (Case Crime No.306/2022) in that continuation. The second occurrence was more aggravated and in the shape of a mob attack. Consequently, the other community became excited and angry due to the indiscriminate stone pelting in the area by the muslim mob, which provided scope of reaction to the other community, rumors started spreading, resultantly the safety and security of shop keepers and residents of the area was put at stake. As a result of pelting of stones, stampede took place in the area. The shop keepers of locality started closing their shops. There was a great apprehension of retaliation and chain reaction in both the communities. The public became fearful and an immediate situation of maintenance of public order arose before the police and administrative authorities. The police persons of different police stations and the persons of PAC were deployed with due promptness. The part of proposal sent by the Superintendent of Police, Hardoi on 20.09.2022 to the District Magistrate, Hardoi describing the situation is reproduced as under :-

"मुस्लिम सम्प्रदाय के त्योहार मोहर्रम के दिन तिरंगा यात्रा निकाले जाने व नाने द्वारा तिरंगा यात्रा की अगुवाई किये जाने से अभियुक्त



मुन्ना उर्फ सहनवाज द्वारा, जो राष्ट्र विरोधी मानसिकता का व्यक्ति है, उससे क्षुब्ध होकर नाने के घर पर जान से मारने की नियत से अपने अन्य साथियों के साथ नाजायज गोल बनाकर धावा बोला गया उसके न मिलने पर उसकी अवयस्क बहन कु० रजनी के साथ घर में घुसकर छेड़छाड़ किया गया। जिसका विरोध करने पर उसकी माँ के सीने पर तमंचा रखकर फायर किया गया। फायर मिस हो जाने पर जान माल की धमकी दी गयी। घटना की सूचना थाने में दिये जाने की सूचना पाकर पुनः नाने के घर पर उसको जान से मारने की नियत से धावा बोला गया, नाजायज गोला बनाकर आक्रमण कर घर पर पत्थरबाजी कर तोड़फोड़ किया गया तथा मोहल्ले में भी पत्थरबाजी की गयी व तमंचा लहराया गया। जिससे दोनों सम्प्रदायों की जनता में काफी आक्रोश व पास पड़ोस के दुकानदारों व आस-पास के क्षेत्रों में विशेषकर अभिभावकों एवं महिलाओं में अपने बच्चे एवं बच्चियों की सुरक्षा को लेकर भय व दहशत व्याप्त हो गया। पथराव होते ही भगदड़ मच गयी, घरों के दरवाजे बन्द हो गये, दुकानदार भी अपनी दुकाने बन्द कर लिये। कई तरह की अफवाहें फैलने से लोगों में दहशत, भय, असुरक्षा की भावना व्याप्त हो गयी। लोग अपने व अपने बच्चों को असुरक्षित महसूस करने लगे। लोक शान्ति व सुरक्षा की भावना पैदा करने के लिए थाना पाली, थाना हरियावां, थाना पचदेवरा, थाना साण्डी, थाना अरवल, थाना मझिला, थाना सुरसा व पुलिस लाइन की पुलिस फोर्स के साथ-साथ पीएसी भी तैनात की गयी जिसका उल्लेख थाना पाली, थाना हरियावां, थाना पचदेवरा, थाना साण्डी, थाना अरवल, थाना मझिला, थाना सुरसा की जीडी में किया गया है।

जीडी के इन तथ्यों से इस बात की पुष्टि होती है कि अभियुक्त मुन्ना उर्फ सहनवाज उपरोक्त द्वारा अपने अन्य साथियों के साथ की गयी उक्त घटना से मो० इमामचौक कस्वा पाली व आस-पास के क्षेत्रों में भय एवं दहशत व्याप्त हुई है एवं लोक व्यवस्था अस्त-व्यस्त व भंग हुई है। उपरोक्त थानों की पुलिस बल शान्ति व्यवस्था हेतु लगातार कई दिनों तक बनी रही तथा पीएसी बल 27 बटालियन सीतापुर दिनांक 11.08.2022 से दिनांक 04.09.2022 तक लगातार बनी रही। अभी भी थाना पाली की पुलिस बल शांति व्यवस्था हेतु लगातार घटनास्थल पर लगी हुई है।

कस्वा पाली जनपद हरदोई में अभियुक्त मुन्ना उर्फ सहनवाज द्वारा अपने साथियों के साथ कारित की गयी उक्त घटना से कस्वा पाली में भय व दहशत व्याप्त हुआ। जहां पर सुरक्षा हेतु थाना पाली

व अन्य थानों की फोर्स रवाना की जाती रही है। प्रभारी निरीक्षक पाली द्वारा भी बीच-बीच में घटनास्थल मो० इमामचौक कस्वा पाली जाकर स्थिति का जायजा लिया जाता रहा है। जहां यह पाया गया कि लोगों में भय व दहशत व्याप्त है। कस्वा पाली व आस पास के लोगों को सुरक्षा देने का पूर्ण आश्वासन दिया गया जिसका उल्लेख थाना पाली की वापसी जीडी में किया गया है। वापसी जीडी के तथ्यों से भी यह पाया जा रहा है कि अभियुक्त मुन्ना उर्फ सहनवाज उपरोक्त द्वारा किये गये छेड़छाड़ व विरोध करने पर उसकी माँ के सीने पर तमंचा रखकर फायर करना, फायर मिस हो जाना व जान से मारने की धमकी देना तथा उसके घर के सामने तमंचा लहराकर भय पैदा करना व गाली गलौज करना, पत्थरबाजी करना उसके उपरान्त कस्वा पाली के मो० इमामचौक में पत्थरबाजी व तोड़फोड़ की घटना से आस-पास के लोगों में भय व दहशत व्याप्त हुआ है व लोक व्यवस्था भंग हुई है।

घटनास्थल पर क्षेत्रीय भाजपा विधायक माधवेन्द्र प्रताप सिंह उर्फ रानू भी मौके पर पहुंचे। प्रश्नगत घटना में संलिप्त अभि०गणों में मुस्लिम सम्प्रदाय के होने के कारण दोनों तरफ से घटना को साम्प्रदायिक रंग देने के लिए भी प्रयास किया गया। घटना को हिन्दू व मुस्लिम विरोधी साम्प्रदायिक रंग देकर भी दंगा भड़काने का प्रयास किया गया। जिससे सामाजिक सौहार्द बिगड़ने का खतरा उत्पन्न हुआ तथा लोक शान्ति अस्त व्यस्त एवं छिन्न भिन्न हुई।

विवेचना के मध्य कु० लड़की रजनी के साथ छेड़छाड़ करना व विरोध करने पर उसकी माँ के सीने पर तमंचा रखकर फायर करना, फायर मिस हो जाना व जान से मारने की धमकी देना तथा उसके घर के सामने तमंचे लहराकर भय पैदा करना व गाली गलौज करना उसके उपरान्त कस्वा पाली के मो० इमामचौक में पत्थरबाजी व तोड़फोड़ की घटना की गम्भीरता व समाजिक संवेदनशीलता को देखते हुए उच्चाधिकारीगण श्रीमान जिला अधिकारी महोदय हरदोई, अपर पुलिस अधीक्षक (पश्चिमी), पुलिस उपाधीक्षक शाहबाद, व उपजिलाधिकारी सवायजपुर आदि भी मौके पर पहुंचे और मैं पुलिस अधीक्षक स्वयं भी पहुंचा तथा लोक शान्ति व सुरक्षा व्यवस्था में लगे रहे। इससे भी इस बात की पुष्टि होती है कि प्रकरण लोक व्यवस्था से सम्बंधित है।

घटना का प्रकाशन राष्ट्रीय स्तर के दैनिक समाचार पत्रों में भी हुआ तथा इलेक्ट्रॉनिक मीडिया द्वारा भी इस तथ्य को प्रमुखता से दिखाया गया। राष्ट्रीय समाचार पत्रों में इस सनसनीखेज घटना के

प्रकाशन से सुदूरवर्ती क्षेत्रों में भी इस का प्रचार-प्रसार हुआ और लोक व्यवस्था पर प्रतिकूल प्रभाव पड़ा। पास-पड़ोस के निवासियों में भय, दहशत, सुरक्षा एवं अनिश्चतता का भाव व्याप्त हुआ तथा स्पष्ट रूप से जन जीवन का सामान्य प्रवाह व अमन चैन भी बाधित हुआ तथा लोक व्यवस्था पूर्ण रूप से अस्त-व्यस्त व भंग हुई।

अभियुक्त मुन्ना उर्फ सहनवाज द्वारा अपने साथियों के साथ किये गये उपरोक्त कृत्य से व तमंचा लहराने, मो० इमामचौक में पत्थरबाजी व तोड़फोड़ की घटना कारित करने के कारण कस्वा पाली व आस-पास के क्षेत्रों की लोक व्यवस्था पूर्णतः छिन्न-भिन्न हो गयी। कस्वा पाली में लगातार पुलिस बल की ड्यूटी शान्ति व्यवस्था हेतु थाना स्थानीय से लगायी जा रही है। अब भी लोगों में अज्ञात भय की आशंका व्याप्त है। प्रभारी निरीक्षक पाली द्वारा अभी भी कस्वा पाली व आस-पास के क्षेत्रों में लगातार शान्ति व्यवस्था हेतु नजर रखी जा रही है।

यह कि स्थानीय अभिसूचना इकाई हरदोई के प्रभारी निरीक्षक द्वारा अपने पत्र सं० एलआईयू-विशेष आख्या / 2022 दिनांकित अगस्त 16,2022 से मुझ पुलिस अधीक्षक हरदोई को लिखे गये पत्र में यह अवगत कराया गया है कि उक्त प्रकरण को लेकर सोशल मीडिया पर विवाद/पथराव के वीडियो के साथ-साथ मु०अ०सं० 305/2022 में नामजद अभियुक्त मुन्ना उपरोक्त द्वारा दोनों हाथों में तमंचा लेकर दिन – दहाड़े खुले आम घूमने से उस समय घटनास्थल पर अफर – तफरी का माहौल व्याप्त हो गया एवं कस्वे में साम्प्रदायिक संवेदनशीलता परिलक्षित हुई। घटना के बाद से घटनास्थल के क्षेत्र के आस पास में आम व्यापारियों आदि द्वारा/दुकान/प्रतिष्ठान आदि बन्द कर दी गयी। सूचना पर कई थानों की पुलिस द्वारा मौके पर पहुंच कर स्थिति को नियंत्रण में किया गया। सोशल मीडिया पर वायरल वीडियो कस्वा स्थानीय में चर्चा का विषय बने हुए है तथा दोनो ही सम्प्रदायों के व्यक्तियों के द्वारा एक दूसरे के मोहल्ले में जाने से बचा जा रहा है/ परहेज किया जा रहा है। आगामी समय में उक्त अभियुक्त के जमानत पर छूटने की दशा में कस्वा स्थानीय की साम्प्रदायिक संवेदनशीलता में बढ़ोत्तरी अथवा वादी अथवा गवाहान को दबाव बनाने की नियत से धमकाने आदि की सम्भावना से इन्कार नहीं किया जा सकता है। स्थानीय अभिसूचना इकाई के उक्त पत्र के सम्बन्ध में मेरे द्वारा अपने पत्र सं० वाचक- विविध/2022 दिनांक अगस्त 17,2022 के माध्यम से प्रभारी निरीक्षक पाली हरदोई को निर्देशित किया गया कि उपरोक्त सूचना

के दृष्टिगत थाना क्षेत्र में लोक व्यवस्था बनाये रखने हेतु समुचित पुलिस प्रवन्ध करें तथा प्रकरण की गम्भीरता को देखते हुए दिन – प्रतिदिन सतर्क दृष्टि रखना सुनिश्चित करें और महत्वपूर्ण सूचना से अवगत करायें। जिसकी प्रति अपर पुलिस अधीक्षक पश्चिमी व क्षेत्राधिकारी शाहाबाद हरदोई को प्रेषित की गयी है जिससे इस तथ्य की पुष्टि होती है कि अभियुक्त मुन्ना उर्फ सहनवाज द्वारा अपने साथियों के साथ किये गये उपरोक्त कृत्य से व तमंचा लहराने मौ० इमामचौक में पत्थरबाजी व तोड़फोड़ की घटना कारित करने के कारण कस्बा पाली व आस-पास के क्षेत्रों की लोक व्यवस्था पूर्णतः अस्त व्यस्त व भंग हुई है एवं भय व दहशत व्याप्त है।"

36. The proposal of the Superintendent of Police, Hardoi was forwarded to the District Magistrate, Hardoi who considered the entire situation along with the report of the police regarding the prevailing situation and preventive action of Police and administration. The Assessing Authority also considered the report of L.I.U. regarding the seriousness of the situation, including video clippings of the occurrence and the report regarding the fact that it is apprehended that as the petitioner would be released from jail on bail, a communal tension may again be raised and the petitioner may threaten to concerned witnesses of the criminal cases to win over them. There was a real that as the petitioner would be released on bail, the public order of the area may again be disturbed. Therefore the District Magistrate, Hardoi has passed the detention order dated 24.09.2022 along with the grounds of detention.

37. Hon'ble Apex Court in the case of **Arun Ghosh Vs. State of West Bengal, 1970 1 SCC 1998** held that :-

"3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: Dr Ram Manohar Lohia v. State of Bihar (1966) 1 SCR 709 ; Pushkar Mukherjee v. State of W.B. WP No. 179 of 1968, decided on November 7, 1968 : (1969) 1 SCC 10 and Shyamal Chakraborty v.

Commissioner of Police, Calcutta WP No. 102 of 1969, decided on August 4, 1969 : (1969) 2 SCC 426. In Dr Ram Manohar Lohia case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. 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 affect upon the public tranquility 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. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition

No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr Ram Manohar Lohia case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

38. In the case of ***Ram Ranjan Chatterjee Vs. State of West Bengal, (1975) 4 SCC 143*** the Hon'ble Apex Court by considering the above decision has marked the difference in "law and order" and "public order" in following words :-

"8. It may be remembered that qualitatively, the acts which affect "law and order" are not different from the acts which affect "public order". Indeed, a state of peace or orderly tranquility which prevails as a result of the observance or enforcement of internal laws and regulations by the Government, is a feature common to the concepts of "law and order" and "public order". Every kind of disorder or contravention of law affects that orderly tranquility. The distinction between the areas of "law and order" and "public order" as pointed by this Court in Arun Ghosh v. State of West Bengal, "is one of degree and extent of the reach of the act in question on society". It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of "law and order" and "public order" may have a common "epicentre", but it is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting "public order" from that concerning "law and order"."

39. On the same point Hon'ble Apex Court in the case of ***Indradeo Mahato v. State of W.B., (1973) 4 SCC 4*** has held as under :-

*"Similar acts in different situations may give rise to different problems : in one set of circumstances an act may pose only a law and order problem whereas in another it may generate deep and*

*widespread vibrations having serious enough impact on the civilized peace-abiding society so as to affect public order, one has to weigh the degree and sweep of the harm the act in question is capable of in its context. Every case has, therefore, to be considered on its own facts and circumstances."*

40. Accordingly, if the threat on public order is established by the material available on record, the detaining authority may rightly invoke the provisions of preventive detention.

41. In the present case it transpires from the proposal of the Superintendent of Police, Hardoi as well as the grounds of detention passed by the District Magistrate, Hardoi the act of detenue created the situation which adversely affected the public order situation in the locality which was prejudicial to maintenance of the law and order of the area.

42. Learned counsel for the petitioner has also argued that the occurrence took place on 10.08.2022 and the order of preventive detention was passed on 24.09.2022. There was no proximity with the offence and the invocation of the provisions of the Act, 1980. The record shows that the petitioner was arrested by the police on 12.08.2022. As a consequence of both the occurrences on 10.08.2022 by which a serious situation of public order came to the surface. Hence, the police and administration deployed the police persons of several police stations as well as PAC persons to prevent any further clash and communal riot. In that connection just after four days of the arrest, the Inspector Incharge of the L.I.U. wrote letter to the Superintendent of Police, Hardoi on 16.08.2022 that there is apprehension that as the petitioner and other persons will be released on bail, communal tensions may be on stake in the area. Accordingly, the Superintendent of Police has informed the Station Officer of the Police Station Pali, District Hardoi to keep vigil over the maintenance of the public order in the area and keep him constantly informed. It shows that a sensitive and tense situation was continuing even after arrest of the petitioner. Subsequently, the petitioner

moved his bail application in case crime no. 306/2022 on 29.08.2022 which was allowed by the court. Thereafter, he moved the application for bail in case crime no. 305/2022 on 09.09.2022, in which the date for hearing was fixed by the court concerned as 26.09.2022 and it was most likely that the accused would be released on bail. In case crime no. 307/2022 also, as the case was triable by the magistrate, therefore, taking into consideration the apprehension of disturbance in communal harmony and as the petitioner was trying his best to be released on bail in case crime nos. 306/2022 and 307/2022 also. The petitioner was intending to file his nomination for the post of Chairman/Sabhasad of the area as it has been mentioned by him in his representation. Therefore, considering the report of L.I.U. and after proper examination of the situation on the proposal of the Superintendent of Police, Hardoi dated 20.09.2022 the District Magistrate, Hardoi passed the order of detention of petitioner on 24.09.2022 under the Act of 1980 then in that case it cannot be said that there was no material for his subjective satisfaction regarding apprehension of danger to public order even after 44 days from the date of occurrence. The detention order was passed by the District Magistrate, Hardoi after four days from the proposal of Superintendent of Police, Hardoi. In absence of any other fact, it can be presumed the detaining authority in four days had verified and examined properly the facts mentioned in the proposal dated 20.09.2022. The above situation cannot be examined like a mathematical calculation, therefore, the argument advanced by the learned counsel for the petitioner that invocation of the Act, 1980 has no proximity after 45 days of the occurrence, has no force.

43. Learned counsel for the petitioner has submitted that since the bail order dated 12.09.2022 in case crime no. 306/2022 has not been provided by the detaining authority, therefore, the order of detention is vitiated. In above context, the fact cannot be denied that the bail applications of petitioner in all the criminal cases have been moved in the court by the family members as well as pairokar of the petitioner and there is nothing on record which could prove that the bail applications



were moved in criminal cases through jail superintendent. Also the bail applications had been pressed by the private counsel appointed by the petitioner, not by any amicus curiae. The present writ petition has been filed by his father Sabban as his next friend and as the Pairokar of petitioner. Therefore, it can be presumed that the bail order was very well in the knowledge of the petitioner. In the grounds of detention the Assessing Authority has mentioned the criminal acts of the petitioner and their consequential effects on the society. The Assessing Authority has expressly mentioned at the time of passing order under Section 3 (2) of the Act, 1980, that the petitioner was detained in the jail and there is a likelihood that he would be released soon on bail. As according to Chapter XXXIII of Cr.P.C. the copy of bail application is required to be provided to Government Counsels appointed in the court. The detention order has not been passed by the Assessing Authority on the ground that the petitioner has been released on bail in connection with case crime no. 306/2022 rather detention order has been passed on the ground that since the petitioner is detained in jail, and there is likelihood that soon he will be released on bail and after such release the feeling of fear be developed and communal harmony in residents of the area may be jeopardized. It has also been accepted by the petitioner in para 54 of his petition that he had received several papers along with detention order for preparing his representation. At the time of preparation of his representation the petitioner had not raised any demand of copy of the bail order or any other document, neither it has been mentioned in his representation dated 05.10.2022 also, therefore, the above argument of the learned counsel for the petitioner that non supply of bail order by the assessing authority is sufficient to vitiate the detention order is misconceived.

44. Learned counsel for the petitioner has submitted that petitioner has no criminal history and also there is no probability that detenu will act similarly in future or he has repetitive tendency to act likewise in future. It has been seen in society that an accused without any previous criminal history may commit a heinous offence. In absence of any previous criminal act of offender provisions of Act of 1980 can be invoked against the offender if his criminal act and its consequence comes under the purview of the Act, 1980. The previous criminal history cannot be *sine qua non* for invoking the provisions of the Act of 1980. The petitioner has shown in his representation that he has been preparing to contest the election of Shabhasad/Chairman. Shabhasad is a person who represents the people of the area in Municipal Corporation. As the

factual matrix, during the tricolor flag Yatra, the persons of muslim community were gathered on road on the eve of their festival Muharram where the petitioner has created a dispute with informant. It has been mentioned on the basis of police report as well as video footage that the petitioner was moving with country made firearms in his both the hands and was the leading person in causing attack at the house of informant. After the occurrence of first offence (Case Crime No. 305/2022) the petitioner again along with co-accused persons and the mob of persons of his community attacked at the house of informant where they started stone pelting in the area and started abusing. Although the petitioner is not named in the F.I.R. of Case Crime No.306/2022, yet his name came to the surface during the course of investigation. As a principle, the FIR cannot be an encyclopedia. The second offence (Case Crime No. 306/2022) was more aggravated than the first offence (Case Crime No. 305/2022). Except clash during Tiranga Yatra no previous enmity between the petitioner and the informant has been shown. It can be presumed in the light of above facts that petitioner was intending to impress the people of area on the ground of religious fundamentalism to procure their votes in coming municipal election, therefore, he acted in a manner which was prejudicial to the communal harmony of society as well as public order. In the light of the above circumstances, it cannot be held by this Court that if the petitioner has no any criminal antecedent the provisions of the Act, 1980 cannot be invoked against him.

45. Learned counsel for the petitioner has also submitted that there was no material before the detaining authority on the basis of which a valid subjective satisfaction has been formed that once the petitioner is released from jail, he can again indulge in activities that would be prejudicial to the maintenance of the public order.

46. According to Section 3 (2) and Section 3 (3) of the Act, 1980 for invoking the detention order, the subjective satisfaction of the Assessing Authority is *sine qua non*. There must be some material (facts/evidence) which has to be taken into account while passing the detention order. In the case of ***Ibrahim Nazeer Vs. State of T.N. and another, (2006) 6 SCC 64***, the Hon'ble Apex Court has held as under :-

"7. It has to be noted that whether prayer for bail would be accepted depends on circumstances of each case and no hard and fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on

bail cannot be ipsi dixit of the detaining authority. On the basis of materials before it, the detaining authority came to the conclusion that there is likelihood of detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are passed by various courts. Appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on *Rajesh Gulati v. Govt. of NCT of Delhi*. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant."

47. Section 3 (1) (a) of the Maintenance of Internal Security Act, 1971 (Act No.26 of 1971) confers the power on the authority to detain a person if it is satisfied that such detention is necessary to prevent him from acting in any manner prejudicial to (i) the defence of India, the relation of India with foreign powers or the security of India, (ii) the Security of State or **the maintenance of public order**, or (iii) maintenance of supplies and services essential to the community. Hon'ble Apex Court in the above context in the case of **Magan Gope Vs. State of West Bengal (1975) 1 SCC 415** has held as under :-

"9. It will be seen that the power can be exercised only on one or more of the grounds enumerated above. If the exercise of the power is not on the face of the order correlated to any of those grounds or concerns activities, which are not germane to any of these grounds, such exercise would be vitiated for lack of jurisdiction. Further, the satisfaction spoken of in Section 3(1)-which is the sine qua non to the exercise of the power is the subjective satisfaction of the authority which cannot be tested in court by objective standards. Ordinarily, therefore, the court cannot go behind the satisfaction expressed on the face of the order. As pointed out by this Court in *Ram Manohar Lohia v. State of Bihar*.

*"When an order on the face of it, is not in terms of the rule, a court cannot equally enter into an investigation whether the order of detention was in fact, that is to say irrespective of what is stated in it, in terms of the rule".*

*Thus where the order ex facie is made with a view to prevent an act prejudicial to the maintenance of Public Order, the detaining authority cannot be permitted to show that in fact the order was made to prevent an act prejudicial to the maintenance of supplies and services essential to the life of the community."*

48. In the present case, the petitioner was trying to be released on bail. He had moved the bail application No.2332 of 2022 on 09.09.2022 before the competent court in case crime no. 305/2022, under Sections 147, 148, 149, 452, 354, 307, 506 I.P.C. and Section 7/8 of the POCSO Act (the first offence) in which the date of hearing was fixed 26.09.2022. In subsequent offence (Crime No. 306/2022) under Section 147, 148, 149, 336, 504, 506, 307 I.P.C. and Section 7 of the Criminal Law Amendment Act, the bail application of the applicant was allowed on 12.09.2022, i.e. prior to proposal of the Superintendent of Police, Hardoi. It appears that in furtherance of his plan/legal advise the applicant had not moved any bail application in magistrate triable case (Case Crime No. 307/2022) under Section 3/25 Arms Act. The above fact regarding the bail application and bail order has not been denied by the petitioner in his representation. The above fact can be sufficient material for detaining authority to arrive at a conclusion that petitioner is likely to be released from jail, and according to input of the L.I.U./police concerned that if petitioner is released on bail, he can again indulge in criminal activities and will attempt to disturb the communal harmony of the society.

49. The life and personal liberty of citizens of India is paramount. It is fundamental right which has been protected by the Constitution under Article 21. In case of arrest the Constitution has given certain rights to the citizens of India which have been mentioned in Article 22 (1) and Article 22 (2) of the Constitution of India but the restrictions on the above rights in case of preventive detention has also the force of Constitution which has been mentioned in Article 22 (3) of the Constitution of India. The Constitution also provides in Article 22 (5) that soon after his arrest, the detenu shall be communicated the ground of detention and the detenu shall be afforded the earliest opportunity to make representation against the order of detention. Since the provisions of Article 22 (3) operates as the proviso of the provision of Article 21, therefore, the power of preventive detention be construed within a narrow limit, otherwise the right as guaranteed under Article 21 of the Constitution of India will be adversely affected and to prevent the misuse of provisions of preventive detention under the Act, 1980, the provisions of preventive detention has to be strictly construed and meticulous compliance with procedural safeguards howsoever technical, is mandatory and should be monitored by the court properly. The Hon'ble Apex Court in the case of ***Union of India Vs. Yumnan Anand***

***M. Alias Bocha Alias Kora Alias Suraj and another***, has explained the scope of law of preventive detention in paragraph 8, which reads as under :-

"8. In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See *Rex v. Nallidev* (1917 AC 260); *Mr. Kubic Dariusz v. Union of India and others* (AIR 1990 SC 605). But at the same time, a person's greatest of human freedoms, i.e., personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical is mandatory. The compulsions of the primordial need to maintain order in society, without which enjoyment of all rights, including the right of personal liberty would lose all their meanings, are the true justifications for the laws of preventive detention. This jurisdiction has been described as a "jurisdiction of suspicion", and the compulsions to preserve the values of freedom of a democratic society and social order sometimes merit the curtailment of the individual liberty. (See *Ayya alias Ayub v. State of U.P. and another* (AIR 1989 SC 364). To lose our country by a scrupulous adherence to the written law, said Thomas Jafferson, would be to lose the law, absurdly sacrificing the end to the means. No law is an end itself and the curtailment of liberty for reasons of State's security and national economic discipline as a necessary evil has to be administered under strict constitutional restrictions. No *carte blanche* is given to any organ of the State to be the sole arbiter in such matters."

50. In the case of ***Frances Coralie Mullin Vs. W.G. Khambra, 1980 DGLS (SC) 97***, the Hon'ble Supreme Court has held in paragraph 5 as under :-

"5. We have no doubt in our minds about the role of the Court in cases of preventive detention : it has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court's writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of Article 22 and the Court exacts compliance. Art. 22 (5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Reports tell a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless in-sensibility, the routine and the red-tape of the bureaucratic machine. The four principles enunciated by the Court in *Jayanarayan Sukul v. State of*

West Bengal (supra) as well as other principles enunciated in other cases, an analysis will show, are aimed at shielding personal freedom against indifference, insensibility, routine and red-tape and thus to secure to the detenu the right to make an effective representation. We agree : (1) the detaining authority must provide the detenu a very early opportunity to make a representation, (2) the detaining authority must consider the representation as soon as possible, and this, preferably, must be before the representation is forwarded to the Advisory Board, (3) the representation must be forwarded to the Advisory Board before the Board makes its report, and (4) the consideration by the detaining authority of the representation must be entirely independent of the hearing by the Board or its report, expedition being essential at every stage. We, however, hasten to add that the time-imperative can never be absolute or obsessive. The Court's observations are not to be so understood. There has to be leeway, depending on the necessities (we refrain from using the word 'circumstances') of the case. One may well imagine, a case where a detenu does not make a representation before the Board makes its report making it impossible for the detaining authority either to consider it or to forward it to the Board in time or a case where a detenu makes a representation to the detaining authority so shortly before the Advisory Board takes up the reference that the detaining authority cannot consider the representation before then but may merely forward it to the Board without himself considering it. Several such situations may arise compelling departure from the time-imperative. But no allowance can be made for lethargic indifference. No allowance can be made for needless procrastination. But, allowance must surely be made for necessary consultation where legal intricacies and factual ramifications are involved. The burden of explaining the necessity for the slightest departure from the time-imperative is on the detaining authority."

51. So far as the quick disposal of representation of detenu is concerned, it is revealed from the perusal of the parawise reply of opposite party nos. 1 to 3 stating the day to day movement of the file according to Rules of Business conducted by the department/authorities concerned. The reply of opposite party No.2 and 4 also indicates that there was no laxity in early disposal of representation of detenu. Neither any unexplained delay, nor any laches have been found. The petitioner in present case has not taken any ground that his representation dated 05.10.2022 has been decided by the authorities with inordinate delay. It has also not been argued by the learned counsel for the petitioner that the subsequent orders of detention were having any illegality. The petitioner's defence in criminal cases in connection with

F.I.R. No.305/21, 306/2022 and 307 of 2022, as mentioned in the grounds of petition, cannot be considered by us in present writ petition.

52. The sponsoring authority has thoroughly examined the proposal of Superintendent of Police, Hardoi dated 20.09.2022 and by spending sufficient time and considered all the facts, circumstances, material collected at different levels and then passed the detention order by applying his mind and after his subjective satisfaction. The detenu has been provided the earliest opportunity to submit his representation and his representation was duly considered and expeditiously decided by the District Magistrate, Hardoi, State Government, U.P. Advisory Board, and by Central Government without any undue delay. The grounds on which the petitioner has challenged the detention order and are not according to the established principle of law. Therefore, we are of the considered view that the writ petition being devoid of merit is liable to be dismissed.

53. Accordingly, the writ petition is **dismissed**.

**(Narendra Kumar Johari,J.) (Sangeeta Chandra,J.)**

**Order Date :- 22.09.2023**

ML/-