Neutral Citation No. - 2024:AHC-LKO:28176-DB

High Court of Judicature at Allahabad
(Lucknow)
****

A.F.R.

Judgment/Order Reserved On :06.02.2024
Judgment/Order Delivered On :05.04.2024

Case :- HABEAS CORPUS WRIT PETITION No. - 211 of 2023
Petitioner :- Sandeep Yadav Thru. Brother Pradeep Yadav
Respondent :- Union Of India Thru. Secy. Govt.Of India Mini. Of Home Thru. Joint Secy.(Inernal Secuty.)And Others
Counsel for Petitioner :- Rajendra Prasad Mishra
Counsel for Respondent :- A.S.G.I., Dr. Pooja Singh, Dr Pooja Singh, G.A.

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Hon'ble Rajan Roy, J.
Hon'ble Narendra Kumar Johari, J.

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

1. Heard Shri R.P. Mishra, learned counsel for the petitioner, learned A.G.A. for the State/opposite party Nos. 2 to 4 and Mrs. Pooja Singh, learned counsel for the Union of India/opposite party No.1 and perused the record carefully.

2. This habeas corpus petition has been filed by detenue Sandeep Yadav, S/o Ram Dhani Yadav through his next friend/real brother Pradeep Yadav, assailing the detention order dated 17.05.2023, passed by the District Magistrate, Gonda/Detaining Authority, with prayer to release the petitioner on the ground that the detention order passed under the National Security Act, 1980 (herein after referred as the "Act of 1980") is illegal, arbirary and bad in the eye of law.

3. The brief facts of the case are that, one Ram Kewal Yadav lodged an F.I.R. under Sections 452, 302, 379 IPC vide Crime No.008/2023, at Police Station Kotwali Nagar, District Gonda against the petitioner and

one unknown person, with contention that the son of informant, namely, Krishna Kumar Yadav, who was working as teacher in Janta Inter College, Itiyathok, Gonda and was residing in the house of Mohd. Sabir Ali on rent. On 28.01.2023 at about 7.35 P.M., he was taking rest in his rented accommodation, when accused Sandeep Yadav with one unknown person entered into the room of his son and started quarreling for demand of money. His son refused to give money, resultantly, the above Sandeep Yadav and his colleague struck the head of his son against the inner wall of the room many times, consequently, his son fell down and died on the spot. Thereafter, the accsued persons snatched the money of his son and fled away.

4. On receiving information, the informant came from his village. The date and time of the occurrence has been shown as 28.01.2023, at 07.35 P.M. and the F.I.R. of the case lodged on 29.01.2023, at 4.30 A.M.

5. In furtherance of the F.I.R., the police came in action and arrested the accused Sandeep Yadav and his colleague Jagga @ Jawahar Mishra on 30.01.2023, at 10:10 A.M. During the course of investigation, on the basis of evidence collected, the Investigating Officer added Sections 449, 380, 411, 201 IPC and Section 3/25 Arms Act and after completion of investigation, submitted charge sheet against the accused Sandeep Yadav under Sections 302, 449, 380, 201, 411 IPC and Section 3/25 Arms Act on 27.04.2023. Accordingly, the trial of the case proceeded.

6. On 12.05.2023, the S.H.O., Police Station Kotwali Nagar, District Gonda submitted a report to the Superintendent of Police, Gonda stating that the accused Sandeep Yadav on 28.01.2023, at 3.30 P.M. with intention to creat terror, forcefully hit the head of Krishna Kumar Yadav against the wall of his room and after killing him mercylessly, took money from his pocket and fled away. Before the occurrence, the deceased Krishna Kumar Yadav was taking rest in his room at that time

accused Sandeep Yadav along with his one colleague came at his room and demanded money. When the deceased refused to give money, the accsued killed him brutally. At that time another tenant Km. Lucky Singh was present in her room. When she heard cry of the deceased Krishna Kumar Yadav, she made a call to brother of the deceased named Rahul Yadav from her mobile phone. Rahul Yadav told her to go in the room of his brother and see why he is crying. Rahul Yadav also made video call to Lucky Singh and saw the occurrence from the mobile phone of Lucky Singh, who peeked into the slightly open door of Krishna Kumar Yadav's room. She saw that Krishna Kumar Yadav was lying on the floor and the accused Sandeep Yadav was sitting on the chest of Krishna Kumar Yadav and was strangulating his neck with a Muffler and a colleague of Sandeep Yadav was catching hold the legs of Krishna Kumar Yadav. Having seen the occurrence, the witness Lucky Singh fell in fear, returned back to her room and called an ambulance by dialing 108 from her room. Before ambulance reached, the accused persons fled away from the spot. The persons of the ambulance informed to the police immediately by dialing 112. The occurrence of murder took place in a densely populated area of the locality. As a consequence of aforesaid brutal murder, residents of Mohalla and businessmen of the market were instilled with fear and panick. All the residents of the locality locked themselves in their houses due to the brutal crime. They did not dare to come out of their houses even to purchase articles of their daily use. Simultanelusly, the public order got affected badly in the area. The businessmen shut down shutters of their shops and there was an eerie silence in the area and market. As the S.H.O. of Police Station Kotwali Nagar, got information of the occurrence, he immediately infromed his higher authorities. The Circle Officer, Superintendent of Police, D.I.G., Devipatan Division, Gonda and the Additional Superintendent of Police, etc. reached the spot. They deployed sufficient police force after calling from the nearby police stations and police line of the district and made effort to restore public

order. As a consequence of the occurrence, law and order along with the public order got completely disturbed.

7. He further mentioned that the office bearers of the Teachers Association also made Dharna-Pradarshan and submitted their representation to higher authorities enraged by the occurrence and they expressed their annoyance. Persons of the locality became fearful for their safety and security. The newspapers also published the news of the brutal murder and residents of the entire district were fearful for many days. Police authorities gave assurance to the people of the area that they would ensure that the accused may not be released from jail as the people were in apprehension that as the accused will be released on bail, he will try to influence the witnesses and may again commit heinous offences, like murder. The accused submitted his bail application in the Court of Session Judge on 08.05.2023, in which the date 18.05.2023 was fixed for its hearing and there was a high probability that his bail application will be allowed, hence, necessary action be taken to detain the accused under the Act of 1980.

8. The Circle Officer concerned in his letter to Superintendent of Police, Gonda dated 15.05.2023, expressed his consent on the report of S.H.O., Kotwali Nagar, Gonda and recommended to detain the accsued under the Act of 1980.

9. The Additional Superintendent of Police, Gonda also expressed his agreement with the letter of S.H.O., Police Station Kotwali Nagar, Gonda and gave consent to the report of Circle Officer, City, Gonda and requested to the Superintendent of Police, Gonda to detain accused under the Act of 1980 vide his letter dated 16.05.2023 to Superintendent of Police, Gonda.

10. The Superintendent of Police, Gonda considered the reports of S.H.O., Police Station Kotwali, Circle Officer and Additional Superintendent of Police, and requested the District Magistrate, Gonda by his letter dated 17.05.2023 to detain the accused/petitioner under the Act of 1980.

11. The District Magistrate, Gonda perused and considered the above reports as well as other related material/documentary evidence submitted by the police, which were collected by the Investigating Officer during the course of investigation of the case and after his subjective satisfaction that accused/petitioner has committed the heinous offence and as a result of the fearful and daring offence public order had been affected adversely in the locality. The act of accused was prejudicial to public order. He is a criminal minded and powerful person who has moved his bail application before Sessions Judge, Gonda and it's very likely he will be released on bail, there is a great apprehension that after release from jail, the accused/petitioner may again indulge in his criminal activities and may again commit any crime prejudicial to the maintenance of public order, hence the District Magistrate, Gonda passed the order dated 17.05.2023 to detain the petitioner/accused under Section 3 (2) of the Act of 1980.

12. Above detention order along with the grounds of detention and appended documentary evidences have been served to accsued, through Jail Superintendent, Gonda on the same date as he was under incarceration. The District Magistrate, Gonda also sent his report along with the detention order, grounds of detention and related documentary evidence to opposite party No.2 on 18.05.2023, the detentioin order was approved by the opposite party No.2 on 25.05.2023, i.e. between 12 days from the date of order of detention. The approval order of the State Government was received by the District Magistrate through radiogram

on 25.05.2023 itself, which was served upon the petitioner on the same date in jail through opposite party No.4.

13. Opposite party No.2 further sent the copy of detention order, grounds of detention with appended documentary evidence as well as its approval to opposite party No.1, in accordance with the provisions of Section 3 (5) of the Act of 1980.

14. The petitioner against his detention under Section 3 (2) of the Act of 1980, submitted his representation dated 27.05.2023 to opposite party No.4, who transmitted it to opposite party No.3 on 27.05.2023 itself. Opposite party No.3, the District Magistrate, Gonda sent the copies of representation to opposite party No.1, 2 and the Advisory Board (detention), Lucknow promptly.

15. Opposite Party No.3 called the report from Superintendent of Police, Gonda on the representation of petitioner/accused. 28.05.2023 was Sunday holiday. Thereafter, on 29.05.2023, he received the report of Superintendent of Police, Gonda and after due consideration, he rejected the representation of accused/petitioner on 30.05.2023 and communicated his rejection order to detenue on same date through opposite party No.4.

16. The representation of the petitioner/accused sent by opposite party No.3 was received by concerned official of State Government on 01.06.2023 along with the letter of District Magistrate, Gonda dated 30.05.2023 and parawise comment on it. The State Government sent a copy of the representation along with parawise comments thereon to opposite party No.1 through speed post and to Advisory Board through special messsenger vide its separate letters dated 01.06.2023. The concerned official of opposite party No.2 examined the representation on 02.06.2023. The joint Secretary also examined it on the same day. There

was Saturday and Sunday on 03.06.2023 and 04.06.2023, hence the Special Secretary (Home) examined the representation on 05.06.2023. Subsequently, the Secretary (Home) and Principal Secretary (Home) Government of U.P., Lucknow, examined the same on 06.06.2023. Thereafter, the representation was submitted to the higher authorities for final order, who, after due consideration, rejected the same on 07.06.2023. The information of rejection was sent through telegram to opposite party No.3 on 08.06.2023. The said telegram was communicated to the petitioner/accused on same day through opposite party No.4.

17. The U.P. Advisory Board (Detention), Lucknow vide its letter dated 22.06.2023 informed the opposite party No.3 that the case of the petitioner would be taken up before the Board for hearing on 28.06.2023. Opposite party No.2 communicated the same through telegram/email dated 22.06.2023 to petitioner. On 28.06.2023, the petitioner personally appeared before the U.P. Advistory Board (Detention). The Board also, after due consideration, rejected the representation of the petitioner and submitted its report to the section of opposite party No.2 on 03.07.2023. The said order was also communicated to petitioner promptly.

18. Opposite party No.2 again considered the case of the petitioner after getting the report of U.P. Advisory Board under Section 11 of the Act of 1980 and extended the period of detention for 03 months from the date of detention and for communication sent the order vide telegram/letter dated 6th July, 2023, which (the telegram) was received by opposite party No.4 on 07.07.2023 and formal order on 13.07.2023. The aforesaid radiogram as well as formal order were served to the petitioner on 07.07.2023 and 13.07.2023 respectively.

19. The representation of petitioner along with report and parawise comments was received by official of opposite party No.1 on 09.06.2023. There was holiday on 10.06.2023 and 11.06.2023. Hence, the said representation was examined by officials of opposite party No.1 on 12.06.2023. Thereafter, the representation was examined by Under Secretary and Deputy Secretary on 13.06.2023, by Additional Secretary on 14.06.2023, and on the same day, i.e. on 14.06.2023, opposite party No.1 rejected the representation after due consideration. Thereafter, the file was returned through proper channel and reached the concerned section on 16.06.2023, who, by wireless message dated 16.06.2023, informed the above rejection order, which was also served to petitioner.

20. From the perusal of counter affidavits of opposite party No.1 to 4, it transpires that the detention order dated 17.05.2023 was communicated to the petitioner on the same day along with grounds of detention and annexed documents. Thereafter, the detention order was confirmed by the State Governent within the period prescribed by the Statute. The representations of accused/petitioner were also decided by the opposite party Nos.1, 2 and 3 as well as by the Advisory Board (Detention), Lucknow, and communicated the decisions to petitioner with due promptness. No violation of any provision of the Act of 1980 has been found in disposal of representation as well as communication of aforesaid decisions to petitioner.

21. Learned counsel for the petitioner submitted that according to provisions of Section 3 (2) of the Act of 1980, the accused can be detained under the Act, when there is an apprehension of disturbance of public order. In present case, as according to the F.I.R., the offence was committed by the accused/petitioner within the four walls of a residential house. According to the prosecution story there may be a situation of disturbance of "law and order" but there was no disturbance in "public order", hence, the provisions of Section 3 (2) of the Act, 1980 has been

slapped on accused illegally and without any basis. Petitioner has no criminal history. Learned counsel for petitioner further submitted that order of preventive detention has been passed against petitioner after approximately 3 and 1/2 months after the date of occurrence, i.e. on stale grounds, that too, on a solitary criminal case. At the time of passing of detention order, the petitioner was in jail. The detaining authority failed to consider essential ingredients of Section 3 of the Act, 1980 for his subjective satisfaction, therefore, the impugned order is against Article 21 and 22 of the Constitution.

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

(i) Shiv Kumar @ Mukhiya Vs. State of U.P. , [2015 (3) JIC 92 (All)]
(ii) Mrs. T. Devaki v. Government of Tamil Nadu and others, (1990) 2 SCC 456
(iii) Gulab Mehra Vs. State of U.P. and others (1987) 4 SCC 302
(iv) Bharat Lal Tewari Vs. State of U.P. & others [Habeas Corpus Petition No.12782 of 1988, decided on 17.02.1989]
(v) Manu Bhushan Roy Pradhan Vs. State of West Bengal and others, *AIR 1973 SC 295.*
(vi) Islamuddin Vs. The State, 1991, L.Cr.R 27
(vii)Ram Bharose Yadav Vs. District Magistrage, Deoria & Ors., [2004 (2) JIC 116 (All)]
(viii) Santosh Kumar Upadhyay Vs. District Magistrate, Gonda and others, 2006 (1) LCrR 338
(ix) Pahadi @ Shiv Shanker Verma Vs. State of U.P. and others [Writ Petition No.670(H.C.) of 2003, decided on 27.07.2004]
(x) Waseem Vs. State of U.P. and others, L.Cr.R 225 and in the case of Ram Singh Vs. District Magistrate, Lucknow and others, 1985 L.L.Journal 335

23. The counsel for the opposite parties vehemently opposed the writ petition and submitted that accsued is a criminal minded person; he has committed the murder of a Government teacher brutally; as a consequence of daring and fearless act of petitioner, public order in the

area got disturbed badly. The detaining authority considered the police report properly and after his subjective satisfaction that the act of petitioner was prejudicial to maintenance of public order detention order has been passed by the District Magistrate. Petitioner was likely to be released on bail and there was great apprehension that after release on bail he may commit heinous crimes and acts against the maintenance of public order as well, therefore, petitioner has rightly and legally been detained under the Act of 1980 by the opposite party No.3.

24. Learned counsel for the opposite parties relied upon following case laws in support of their arguments :-

(i) ***Malwa Shaw Vs. State of West Bengal, (1974) 4 SCC 127***

(ii) ***Ibrahim Nazeer Vs. State of Tamil Nadu & another, AIR 2006 SC 3606***

(iii) ***Veeramani Vs. State of Tamil Nadu, (1994) 2 SCC 337***

25. We have considered the arguments of both the sides and have also perused the records.

26. According to the facts of the case the petitioner had caused the murder of Krishna Kumar Yadav on 28.01.2023. As a consequence of the offence the residents and business persons of the area became fearful and terrorised. The public order and tranquility got disturbed badly. The petitioner who was arrested in connection with the aforesaid offence on 30.01.2023 was trying to be released on bail. Knowing about it, the general public again got panicked. There was a great apprehension that after release on bail the petitioner will again indulge in criminal acts and act prejudicial to public order and peace, hence District Magistrate, Gonda/detaining authority passed the order on 17.05.2023 to detain him under the provisions of the Act of 1980.

27. Learned counsel for the petitioner has submitted that the murder of a single person took place inside the room. The offence was committed by accused neither in day light, nor in public view. Lucky Singh is a planted witness. Trial is still pending. The petitioner was not known criminal. He was having no criminal history. Hence, there was no situation of disturbance in public order; maximum, as a result of offence, there would have been adverse effect on law and order situation of the area.

28. In support of his argument, learned counsel for the petitioner submitted the judgment of Hon'ble Supreme Court in the case of **T. Devaki v. Government of Tamil Nadu and others, (1990) 2 SCC 456**, the Hon'ble Apex Court has held that :

> ***"18.*** *The question which falls for consideration is whether single incident of murderous assault by the detenu and his associates on the Minister at the Seminar held at Dry Chilly Merchants' Association Kalai Arangam Hall was prejudical to the maintenance of public order. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order problem but the same need not affect maintenance of public order. There is basic difference between 'law and order'and 'public order', this aspect has been considered by this Court in a number of decisions, see:* ***Dr. Ram Manohar Lohia v. State of Bihar; Pushkar Mukherjee v. The State of West Bengal, and Shymal Chakraborty v. Commissioner of Police.*** *In these cases it was emphasised that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquillity. 1t is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order. In* ***Arun Ghosh v. State of West Bengal, [1970] 3 SCR 288*** *the Court held that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the*

extent of the reach of the act upon the society. This view was reiterated in ***Nagendra Nath Mondal v. State of West Bengal; Sudhir Kumar Saha v. Commissioner of Police, Calcutta; S.K. Kedar v. State of West Bengal; Kanu Biswas v. State of West Bengal; Kishori Mohan v. State of West Bengal, and Amiya Kumar Karmakar v. State of West Bengal.***

19. *In the instant case the detenu was placed under detention on the sole incident which took place on July 29, 1989 and in respect of which the detenu is facing criminal trial before a court of law. The alleged attempted murderous assault made by the detenu and his associates on Thiru Durai Murugan, Minister for Public Works Department may have been made on account of political rivalry. In fact, in his affidavit Thiru Durai Murugan has admitted that in the past the detenu had misbehaved with him even on the floor of the Legislative Assembly of Tamii Nadu while participating in discussion. The attempted assault took place in the hail of Dry Chily Merchants' Association Kalai Arangam where two Ministers, a number of officials including the District Magistrate, as well as members of the public were present. It is alleged that the attempted murderous assault on Thiru Durai Murugan created scare and a feeling of insecurity in the minds of the persons present in the hail and the detenu's action interrupted the "proceedings of the Seminar for a while" (emphasis supplied). This shows that the detenu's activity disturbed the proceedings of the Seminar for a while but the Seminar appears to have continued later on. The incident did not and could not affect public peace and tranquillity nor it had potential to create a sense of alarm and insecurity in the locality. How could a single murderous assault on the Minister concerned at the Seminar could prejudicially affect the even tempo of the life of the community? No doubt in paragraph 4 of the grounds the detaining authority has stated that by committing this grave offence in public, in broad day light, the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and there by acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community. Repitition of these words in the ground are not sufficient to inject the requisite degree of quality and potentiality in the incident in question. A solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy somuch as to bring the case within the purview of the Act. Such a solitary incident*

can only raise a law and order problem and no more. Moreover, there is no material on record to show that the reach and potentiality of the aforesaid incident was so great as to disturb the normal life of the community in the locality or it disturbed general peace and tranquillity. In the absence of such material it is not possible to hold that the incident at the seminar was prejudicial to the maintenance of public order. In ***Manu Bhusan Roy Prodhan v. State of West Bengal,*** *this Court held that a solitary assault on one individual, which may well be equated with an ordinary murder which is not an uncommon occurrence, can hardly be said to disturb public peace and its impact on the society as a whole cannot be considered to be so extensive, widespread and forceful as to disturb the normal life of the community, thereby shaking the balanced tempo of the orderly life of the general public. The Court held that the detention order which had been made for preventing the petitioner from acting in a manner prejudicial to the maintenance of public order, was not sustainable in law. On a careful consideration of the matter in all its aspects and having regard to the circumstances in which the alleged incident took place on 29.7.89, we are of the opinion that the solitary incident as alleged in the ground of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."*

(Emphasis supplied)

29. In the case of **Gulab Mehra Vs. State of U.P. and others (1987) 4 SCC 302,** the Hon'ble Apex Court on the basis of its previous decisions has explaned the difference in "public order" and "law and order" situation as under :-

"12. The meaning of the word 'public order' has been determined by this Court in the case of ***Kanu Biswas v. State of West Bengal****. In this case it has been held 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. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order.*

13. In the case of ***Haradhan Saha v. The State of West Bengal,*** *this Court has observed that the following principles emerge from the judicial decisions : [SCC p.209, SCC (Cri) p. 827, para 341]*

"First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act.

Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention.

Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order.

Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order.

Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

14. This has been followed in ***Kanchanlal Meneklal Chokshi v. State of Gujarat and others,*** *wherein it has been observed that : [SCC pp.18-19, SCC (Cri) p.901, para 8]*

"The ordinary criminal process is not to be circumvented or short circuited by ready resort to preventive detention. But, the possibility of launching a criminal prosecution is not an absolute bar to an order of preventive detention. Nor is it correct to say that if such possibility is not present to the mind of the detaining authority the order of detention is necessarily bad. However, the failure of the detaining authority to

consider the possibility of launching a criminal prosecution may, in the circumstances of a case, lead to the conclusion that the detaining authority had not applied its mind to the vital question whether it was necessary to make an order of preventive detention. Where an express allegation is made that the order of detention was issued in a mechanical fashion without keeping present to its mind the question whether it was necessary to make such an order when an ordinary criminal prosecution could well serve the purpose, the detaining authority must satisfy the Court that question too was borne in mind before the order of detention was made. If the detaining authority fails to satisfy the Court that the detaining authority so bore the question in mind the Court would be justified in drawing the inference that there was no application of the mind by the detaining authority to the vital question whether it was necessary to preventively detain the detenu."

15. In the case of ***Dr Ram Manohar Lohia v. State of Bihar,*** *it has been observed by this Court that :*

"The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. There are three concepts according to the learned Judge (Hidayatullah, J) i.e. "law and order", "public order" and 'security of the State' . It has been observed that to appreciate the scope and extent of each of them, one should imagine three concentric circles. The largest of them represented law and order, next represented public order and the smallest represented the security of the State. An act might affect law and order but not public order just as an act might affect public order but not the security of the State."

16. As observed in the case of ***Arun Ghosh v. State of West Bengal,*** *[SCC pp.99-100, SCC (Cri) p.69, para 31 :*

"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 effect 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."

17. This has been followed in the case of ***Nagendra Nath Mondal v. State of West Bengal,*** *and* ***Nandlal Roy v. State of West Bengal.***

18. Thus from these observations it is evident that an act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and or the even tempo of the community that it becomes a breach of the public order.

19. In the case of ***S.K. Kedar v. State of West Bengal****, this Court has observed that : [SCC p. 818, SCC (Cri) p.3, para 6]*

"The question whether a person 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 one of degree and the extent of the reach of the act upon the society. An act by itself is not determinative of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. 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 effect upon the community. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. It is the degree of disturbance upon the life of the community which determines whether the disturbance amounts only to a breach of the law and order."

*20. This Court has further observed in the case of **Ashok Kumar v. Delhi Administration,** while dealing with the distinction between "public order" and "law and order" to which one of us is a party that : [SCC pp. 409-10, SCC (Cri) p. 457, para 13]*

"The true distinction between the areas of 'public order and 'law and order' lies not in the nature of quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order. The act by itself therefore is not determinant of its own gravity. 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."

*21. On a conspectus of all these decisions it has been observed by this Court in the case of **State of U.P. v. Hari Shankar Tewari,** that conceptually there is difference between law and order and public order but what in a given situation may be a matter covered by law and order may really turn out to be one of public order. One has to turn to the facts of each case to ascertain whether the matter relates to the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. Thus whether an act relates to law and order or to public order depends upon the impact of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order.*

(emphasis supplied)

30. In the case of **Bharat Lal Tewari Vs. State of U.P. & others [Habeas Corpus Petition No.12782 of 1988, decided on 17.02.1989],**

the co-ordinate bench of this court has marked the difference in “public order” and “law and order” in following words :

> *"7. The distinction between concept of “law and order” and “public order” is one of the degree and the extent of the reach of the act upon the society. Any contravention of law always affects order but before it could be said tro affect ‘public order’ it must affect the community or the public at large. The true distinction between the words of “law and order” and “public order” (lies not merely in the nature or quality of the act but upon the degree and extent of its reach upon the society. If the act disturb or dislocates the even tempo of the life of the community, it will be an act which will affect “public order” and not otherwise. To say in other words, the ratio of ‘ public order’ and ‘law and order’ depends upon the impact of the act. If the impact of the act is confined to an individual only, it will be a matter of law and order while if the act will have any impact upon a large section of the community the act will fall within the realm of public order. This is a question of degree and the extent of the impact of the act upon the society which is vital. The public order embraces more of the community than law and order. One of the vital acts is to consider the effect of the act on the even tempo of the life of the community.*
>
> *8. In this case the police had raided only Room No.10 in the Kesari Lodge and the petitioner fired one shot at the police when he was inside the said room and the second shot was fired by him just outside the Kesari Lodge in a blind lane from a pistol on an individual police officer. Therefore, it cannot be said that by the said act of the petitioner a large section of the community was affected or that the potentiality of the said act of the petitioner ws such as would disturb the tranquality or dislocate the even tempo of the life of the community. The said act came within the domain of “law and order” and not “public order”.*
>
> ***(emphasis supplied)***

31. The Hon’ble Apex Court in the case of **Manu Bhushan Roy Pradhan Vs. State of West Bengal and others [Writ Petition No. 252 of 1972, decided on 31.10.1972** has held as under :

"7. In our view, ground no. 1 which does not mention the names details of the others along with whom the petitioner is alleged to have committed the assault, only refers to an assault on an individual named Bulo Das Gupta on April 16, 1971 which prima facie appears to raise only a law and order problem. In Arun Ghosh v. State of West Bengal, (1970) 3 SCR 288 = (AIR 1970 SC 1228) several instances of assaults were stated in the grounds of detention. Hidayatullah C.J. speaking for the Court observed in that case.

"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 = (AIR 1966 SC 740); Pushkar Mukherjee & Ors. v. State of West Bengal, (1969) 2 SCR = (AIR 1970 SC 852); and Shyamal Chakraborty v. The Commissioner of Police, Calcutta, (1970) 1 SCR 762 = (AIR 1970 SC 269). In Dr. Ram Manohar Lohia's case 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 tranquillity. It is the degree of disturbance and its effect upon the life of the community in alocality 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 reper- cussions of the act embrace large sections of the community and incite them to make further breaches if 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."

The learned Chief Justice, after referring to the lines of demarcation drawn by Ramaswami J., ***in W.P. 179 of 1968*** *between serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large and minor breaches of peace which do not affect the public at large, and after noting the analogy drawn by Ramaswami J., between public and private crimes, cautioned against that analogy being pushed too far, observing, that a large number of acts directed against persons or individuals may total up into a breach of public order. After referring to* ***Dr. Ram Manohar Lohia's case (supra)*** *the learned Chief Justice observed :*

"It is always a question of degree of the harm and its effect 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 to a disturbance of the public order or does it affect merely an individual leaving the tranquillity 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."

This view was reaffirmed in ***Nagendra Nath Mondal v. The State of West Bengal (AIR 1972 SC 665), Sudhir Kumar Saha v. Commissioner of Police, Calcutta (1970) 3 SCR 360 = (AIR 1970 SC 814), S.K. Kader v. The State of West Bengal (AIR 1972 SC 1647), Kanu Biswas v. State of West Bengal (AIR 1972 SC 1656), Kishori Mohan v. State of West Bengal (AIR (1972) SC 1749 and Amiya Kumar Karmakar v. State of West Bengal, (W.P. 190 of 1972, D/- 31-7-1972) = (reported in AIR 1972 SC 2259).***

Ground no. 1 in the case before us merely mentions murderous assault by the petitioner on Bulo Das Gupta. It shows neither the nature of the weapon used nor the nature or extent of the injuries inflicted, nor does it disclose as to how long after the assault the injured person died. The motive or the purpose of the assault is also not stated. This kind of a solitary assault on one individual, which may well be equated with an

ordinary murder which is not an uncommon occurrence, can hardly be said to disturb public peace or place public order in jeopardy, so as to bring the case within the purview of, the Act. It can only raise a law and order problem and no more; its impact on the society as a whole cannot be considered to be so extensive, widespread and forceful as to disturb the normal life of the community thereby rudely shaking. the balanced tempo of the orderly life of the ,general public. This ground is, therefore, not at an relevant for sustaining the order of detention for preventing the petitioner from acting in a manner prejudicial to, the maintenance of public order. Ground no. 2, however, is quite germane to the problem of maintenance of public order. But the question arises whether in theabsence of ground no. 1 which, in our view, Ts wholly irrelevant, the detaining authority would have felt satisfied on the basis of the solitary ground no. 2 alone to make the impugned order. Can it be said that ground no. 1 is of a comparatively unessential nature so as not to have meaningfully influenced the decision of the detaining authority. Similar problem has faced this Court on a number of occasions and the decision has generally gone in favour of the detenu. This Court in ***Dr. Ram Krishan Bhardwaj v. The State of Delhi, 1953 SCR 708 = (AIR 1953 SC 318)*** *laid down that the requirement that the grounds must not be vague must be satisfied with respect to each of the grounds. In* ***Dwarka Das Bhatia v. The State of Jammu & Kashmir, 1956 SCR 948 = (AIR 1957 SC 174)*** *the principle deduced from the earlier decisions of this Court and also from the decision of the Federal Court in* ***Keshav Talpade v. The King Emperor, 1943 FCR 88 = AIR 1943 FC 72*** *was stated thus :*

"Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be nonexistent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or

reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority. In applying these principles however the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The Court while' anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged." In ***Rameshwar Lal v. State of Bihar, (1968) 2 SCR 505 = (AIR 1968 SC 1303)*** *it was observed :*

"Since the detenu is not placed before a Magistrate and has only a right of being supplied the grounds of detention with a view to his making a representation to the Advisory Board the grounds must not be vague or indefinite and must afford a real opportunity to make a representation against the detention. Similarly, if a vital ground is shown to be non-existing so that it could not have and ought not to have, played a part in the material for consideration, the court may attach some importance to this fact." In ***Motilal Jain v. State of Bihar (1968) 3 SCR 587 = (AIR 1968 SC 1509),*** *a decision by a Bench of six Judges, after reviewing the earlier decisions, this Court expressed its view thus :*

"The defects noticed in the two grounds mentioned above are sufficient to vitiate the order of detention impugned in these proceedings as it not possible to- hold that those grounds could not have influenced the decision of the detaining authority. Individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by our Constitution to the citizens of this country. If that right is invaded, excepting strictly in accordance with law, the aggrieved party is entitled to appeal to the judicial power of the State for relief. We are not unaware of the fact that the interest of the society is no less important than that of the individual. Our Constitution has made provision for safeguarding the interests of the society. Its provisions harmonise the

> *liberty of the individual with social interest. The authorities have to act solely on the basis of those provisions. They cannot deal with the liberty of the individual in a casual manner, as has been done in this case. Such an approach does not advance the true social interest. Continued indifference to individual liberty is bound to erode the structure of our democratic society."*
>
> ***(Emphasis supplied)***

32. With reference to acts prejudicial to maintenance of public order, Hon'ble Apex Court in the case of ***Ram Ranjan Chatterjee Vs. State of West Bengal, (1975) 4 SCC 143*** has held as under :-

> "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"."

33. In view of the above decisions of Hon'ble Apex Court and this Court, it is apparent in the present case that why the accused/petitioner was demanding money from the deceased Krishna Kumar Yadav, has not been shown. Whether the money was borrowed or it was extortion money is not clear. The conclusion regarding motive of crime can be

drawn after final decision of the trial of concerned criminal case. Whether there was any personal enmity or not is also a matter of merit of the trial. On the factual matrix the contention of the F.I.R. and the report of S.H.O. Police Station Kotwali Nagar, Gonda dated 12.05.2023 do not have similarity on certain facts although it is also the subject matter of the decision of the trial court, yet the material available on record shows that the occurrence took place against an individual person. The material available on record does not indicate that accused while returning from the place of occurrence after committing the offence had ever opened any fire in air or towards any person. The time of occurrence has been shown as 7.35 P.M. in the month of January when the sun sets quite early. The incident was committed inside the house by the accused. The deceased was a teacher in a government school, therefore, the protest/representation of the association of Teachers against the occurrence is a natural act. The deceased might have been the member of the Teachers Association and the Association might have submitted the representation regarding safety, security and arrest the accused. It can be seen commonly that in present society when the population is rising and the resources are limited, moral values and patience are reducing, greed for physical substance and luxury life is raising, therefore, heinous crimes in society are increasing frequently. In this scenario the occurrence of murder is not a rare incident. News papers contain news of occurrence of such criminal acts almost every day. Such a criminal act may be prejudicial to law and order but every crime cannot be termed as prejudicial act againt public order. In the present case no specific consequences of offence of aforesaid murder has been shown in the report of S.H.O., Police Station Kotwali Nagar, Gonda as well as in the grounds of detention order.

34. The co-ordinate Bench of this Court has also in the case of ***Ram Bharose Yadav Vs. District Magistrage, Deoria & Ors., [2004 (2) JIC 116 (All)],*** held in paragraph 6 as under :-

> *"6. We have given thoughtful consideration to the rival submissions. In our opinion disturbance of this nature in such incidents are common in any area where they take place. There does not appear any disturbance to the public order of some lasting endure. It has no where been stated that the incident caused any Chakka jam, etc. organized by the public to show their repugnance to such an occurrence. Public order in itself is a phenomenon, which requires some substantive disturbance in the even tempo of the life of the society. In the region or in whole of the township where such an incident takes place, a temporary disturbance, as a consequence to these incidents, is a normal phenomenon and is most likely to occur. The shorter the life of such disturbance is the lower would be the degree of its potential to disturb the even tempo of the life of the society. This is one serious criterion to differentiate or to draw a wedge between the public order and the law and order. The mere allegation in the General Diary etc. That police force including Circle Officer and S.P. arrived at the spot soon after the occurrence is not sufficient indication of any serious disturbance to the public order. This is a routine and normal practice that senior officers to arrive at the scene of occurrence to supervise the investigation. Therefore, this mere fact does not lead to the conclusion that the incident had any potentiality to disturb the public order or the even tempo of the social life of the concerned area. Nothing serious has been pointed out except the above said fact to disturb the public order. At least no such incident was brought on record otherwise to amplify any such circumstance. We, therefore, see no force in the contention raised by learned A.G.A. In our opinion, the submission made by learned counsel for the petitioner has sufficient force and is accordingly accepted. From the facts it is evident that while passing the detention order the detaining authority lacked an application of mind to the facts and circumstances brought before him."*
>
> ***(Emphasis supplied)***

35. The detention order against any person can be passed, according to the provisions of Section 3 of the Act, 1980, which reads as under :-

*"**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, of the security of India, or

(b) if satisfied with respect of 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. - For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the explanation to sub-section (1) of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

(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 that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(4) When any order is made under this section by an officer mentioned in sub-section (3), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than ten from the date of detention, this sub-section shall apply

subject to the modification that, for the words "twelve days", the words "fifteen days" shall be substituted.

(5) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order."

36. Accordingly, the following essential ingredients for application of Section 3 of the Act of 1980 came into light :-

(i) There should be subjective satisfaction of Central Government or the State Government or District Magistrate or a Commissioner of Police that -
(a) any person is acting in any manner
(b) prejudicial to defence of India, the relation of India with foreign power, of the security of State/India, or
(c) prejudicial to the maintenance of the public order, or to the maintenance of the supplies and services essential to the community, and
(d) there is necessity to prevent the person from doing the above prejudicial acts.

37. Under section 3 (3) of the Act of 1980, the District Magistrate or a Commissioner of Police (under delegation of power by State Government) may pass the written order to detain any person involved in a prejudicial act, after his subjective satisfaction. The words "law and order" have not been mentioned in Section 3 of the Act of 1980. The words "prejudicial to maintenance of public order" has meaning wider than the "maintenance of law and order."

38. Learned counsel for the petitioner has further submitted that the detention order has been passed on occurrence of single offence of murder. The petitioner has no criminal anticident, therefore, in the light of the facts of the case, the decision of detaining authority to detain the petitioner under the provisions of theAct of 1980 was neither justified, proper nor in accordance with law. On the above point, learned counsel has referred some decisions of this Court. The co-ordinate Bench of this Court, in the case of ***Islamuddin Vs. The State, 1991, L.Cr.R 27*** has held on the basis of dictum of Hon'ble Apex Court that :-

> ***"16.*** *In Manu* ***Bhushan Roy Prodhan v. State of West Bengal, AIR 1973 SC 295,*** *it was held that a solitary assault on an individual, which could well be equated with an ordinary murder, could hardly be said to disturb public peace. The Supreme Court further observed that its impact on the society as a whole could not be considered to be so extensive, wide spread and forceful as to disturb the normal life of the community."*
>
> **(Emphyasis supplied)**

39. Learned counsel for the petitioner has also placed his argument that the date of occurrence has been shown as 28.01.2023 and the detention order has been passed on 17.05.2023, after approximately three and half months, which is illegal. In support of his argument he has submitted the decision of the co-ordinate bench of this Court in the case of ***Santosh Kumar Upadhyay Vs. District Magistrate, Gonda and others, 2006 (1) LCrR 338,*** wherein it has been held as under :-

> *"11. In the case in hand, the offence under Section 302, I.P.C. was committed on 13.8.2004 while the detention order was issued on 29.10.2004, i.e. more than 2-1/2 months after. No doubt, this was a heinous offence which might be said to have been committed but such act was not immediately considered to be as prejudicial to the maintenance of public order. Neither the detaining authority, nor the learned Counsel for the State could explain as to why there was a long delay of 2-1/2 months in issuing the detention order, if the act of the petitioner was prejudicial to the public safety and security in the vicinity. Therefore, we are of the considered view that the detention order is not based on sound rational and, as such, it stands vitiated."*
>
> ***(Emphasis supplied)***

In the case of ***Pahadi @ Shiv Shanker Verma Vs. State of U.P. and others [Writ Petition No.670(H.C.) of 2003, decided on 27.07.2004],*** it has been held by co-ordinate bench of this Court as under :-

> ***"6.*** *A perusal of paragraph 12 of the affidavit of the detaining authority would show that since the petitioner-detenue had preferred a bail application before the Court of Special Judge, Gangster Act, Faizabad on 18.8.2003 the detaining authority was convinced that there was every likelihood of his being released on bail and consequently on 3.9.2003 clamped the impugned detention order on him. We are afraid, that a perusal of paragraph 12 of the return of detaining authority shows, that he has not comprehended the pleadings contained in paragraph 14 of the writ petition. Paragraph 12 of the return of the detaining authority shows that he was oblivious of the fact that the pleading in para 14 was that the unexplained delay of three months in the issuance of the detention order has vitiated it in the law.*
>
> *7. We are afraid that this is a classic instance where the detaining authority has confused cheese with chalk.*
>
> *8. For the aforesaid reasons, the pleading contained in paragraph 14 of the petition, in terms, that the impugned detention order was passed after an inordinate delay of over three months, resulting in the live link between the prejudicial activities of the petitioner-detenue and the rationale of clamping a detention order on him being snapped, thereby vitiating the impugned detention order, has been left unanswered in the return of the detaining authority. In our judgment the unexplained delay of three months in the issuance of the impugned detention order has brought about a three-fold results namely :-*
>
> *(a) the live-link between the prejudicial activities of the petitioner-detenue and the rationale of clamping a detention order on him has been snapped.*
>
> *(b) the bonafides of the subjective satisfaction of the detaining authority to detain the petitioner-detenue vide the impugned detention order has been rendered suspect, and*
>
> *(c) the impugned detention order lost its preventive purport and instead acquired a punitive character, defeating the very object of its issuance."*
>
> **((*Emphasis supplied)***

The same view has been taken by the co-ordinate bench of this Court in the case of ***Waseem Vs. State of U.P. and others, L.Cr.R 225***

and in the case of ***Ram Singh Vs. District Magistrate, Lucknow and others, 1985 L.L.Journal 335.***

40. On the point of delay in passing the order for preventive detention of accused learned counsel for the opposite parties have submitted that the dictum of Hon'ble Apex Court in ***Malwa Shaw Vs. State of West Bengal, (1974) 4 SCC 127,*** Hon'ble Apex Court held that :

> *"2. Though at the commencement of the arguments three contentions were formulated by the learned Counsel appearing on behalf of the petitioner against the validity of the order of detention, two were given up when it became evident in the course of the discussion that they were wholly unfounded and ultimately only one contention was pressed by him on behalf of the petitioner. He contended that all the three grounds on which the order of detention was made related to incidents alleged to have taken place between 5th October, 1971 and 31st October, 1971 and they could not reasonably form the basis for reaching a satisfaction on 21st April, 1972 when the order of detention was made, that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community and with a view to preventing him from so acting, it was necessary to detain him. The argument was that the date when the order of detention was made was so far removed from the dates of the alleged incidents that no reasonable person, on the basis of the alleged incidents which took place about five months before, could possibly arrive at the satisfiction leading to the making of the order of detention. The satisfaction of the District Magistrate, which was the foundation of the making of the order of detention, was therefore no satisfaction at all and the order of detention based on it was invalid. This contention is without force and cannot be accepted. The District Magistrate has filed an affidavit in reply to the petition stating that he was satisfied on the basis of the incidents referred to in the grounds of detention that the petitioner was acting in a manner prejudicial to the maintenance of supplies and services essential to the community and he had, therefore, passed the impugned order detaining the petitioner. Of course this statement made on oath by the District Magistrate merely affirms the recital made in the order of detention and like the recital, it can be shown to be incorrect. But when the District*

Magistrate has made a statement on oath, the burden would be heavy on the petitioner to show that what is stated by the District Magistrate is not correct. The petitioner would have to establish from the material on record that the District Magistrate could not possibly have arrived at the satisfaction which he claims to have done and that his satisfaction is colourable. Now the only circumstance on which the petitioner has been able to rest his case is the fact that the incidents referred to in the grounds of detention took place between October 5, 1971 and October 31, 1971 while the satisfaction which constitutes the foundation of the order of detention was arrived at by the District Magistrate on 21st April, 1972, more than five months after the date of the alleged incidents. But this circumstance cannot avail the petitioner. It is but a read of straw which cannot support the argument of the petitioner. The time lag between the dates of the alleged incidents and the making of the order of detention is not so large that it can be said that no reasonable person could possibly arrive at the satisfaction which the District Magistrate did on the basis of the alleged incidents. It must be remembered that some time is bound to elapse before the investigation into the alleged incidents is completed and the matter is brought to the notice of the District Magistrate and the District Magistrate applies his mind and arrives at the requisite satisfaction culminating in the order of detention. The period of about five months which elapsed between the dates of alleged incidents and the making of the order of detention cannot be regarded as so unreasonbly long as to warrant the inference that no satisfaction was really arrived at by the District Magistrate or that the satisfaction was colourable or no satisfaction at all as required by the statute. The satisfaction which the District Magistrate is required to reach in order to support the order of detention is that it is necessary to detain the petitioner with a view to preventing him from acting in a particular manner and that satisfaction can obviously be founded only on a reasonably anticipated prognosis of future behavior of the petitioner made on the basis of past incidents It is not possible to say that the incidents referred to in the grounds of detention were such that they could not reasonably lead to the satisfaction which the District Magistrate reached when he made the order of detention. This contention urged on behalf of the petitioner must, therefore, be rejected and the order of detention must be held to be valid."

(Emphasis supplied)

41. In above case, the accused was having criminal history of same kind of offence. The accused was involved in theft, which took place on different dates. The accused was involved in the theft of 1133 Mts. length of copper wire from the electric pole, which took place on 5/6.10.1971; 1070 Mts. of copper wire from the electric pole on 5/7.10.1971; theft of 805 Kg. of copper wire on 30/31.10.1971 which disturbed the community at large. The offence committed by the accused were of the similar nature and it has been found that as a result and repurcussion of the offence, the normal life and routine of large number of people of the area was affected, accordingly the detaining authority applied his mind that accused is indulging in activities in a manner prejudicial to the maintenance of supplying the services essential for the community at large. Therefore, with a view to prevent further commission of same nature of offences, the detaining authority rightly passed the detention order against him. The time gap from the date of incident and the date of detention order, was not material, but it is the nature of offences, which provided material for subjective satisfaction of the detaining authority.

42. Learned A.G.A. also argued that the accsued who had committed the offence under the substantive law and who is languishing in jail was likely to be released on bail. If the detaining authority satisfies that the accused is likely to release on bail, this fact was sufficient for his subjective satisfaction. In support of his argument, learned counsel for the opposite parties have relied upon paragraph 7 of the judgment of Hon'ble Apex Court in the case of ***Ibrahim Nazeer Vs. State of Tamil Nadu & another, AIR 2006 SC 3606, which reads 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."*
>
> ***(Emphasis supplied)***

43. In the above case the accused was engaged in smuggling of foreign goods. As he arrived at on 31.08.2005, at Chennai Airport, he falsely declared that he was having only foreign electronic goods of value Rs.30,000/-, whereas after seizure the value of such goods was found as Rs.8,22,500/-. He gave a false statement before the authority that the goods belong to one Selvi Narayana. Infact the bags were belonging to the accused. The accused was detained by the police under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The offence of the accused was found serious in nature and was found fit for detention of accused under Section 3 of the Act of 1980, therefore, the detaining authority satisfied with the material available before him that accused was likely to be released on bail, therefore, he passed the detention order. It was his just subjective satisfaction in accordance with law. However, the facts and circumstances of said case are different from the facts and circumstances of the case in hand, as in that case smuggeling of foreign electronic items were likely to cause adverse effect to the defence and security of

India as well as economy and market policy of the State. Undoubtedly, it may affect the public at large.

44. On the same point, learned counsel for the opposite parties have submitted another dictum of Hon'ble Apex Court in the case of ***Veeramani Vs. State of Tamil Nadu, (1994) 2 SCC 337***. He relies upon paragraph 8, which reads as under :-

> *"8. But in the instant case what we have to mainly see is whether there was awareness in the mind of the detaining authority that the detenu is in custody and that he had reason to believe that he is likely to be released. The grounds do disclose that the detaining authority was aware that the detenu is in custody and it is further mentioned that he was also aware that bail is usually granted by the courts in such cases and it is further emphasised that there is 'imminent possibility' of the detenu coming out on bail. As a matter of fact the High Court in its judgment while considering this aspect also observed thus :*
>
> > *"The grounds indicate that the detenu, who was in remand, was likely to file a bail application and come out on bail. This shows the subjective satisfaction of the detaining authority not only of the awareness of the petitioner being in remand, but his subjective satisfaction of the likelihood of the petitioner coming out on bail by filing bail application. Of course, the detaining authority need not have stated that he was also aware that bail is usually granted by courts in such cases and hence there is imminent possibility that he will come out on bail if it has to be held to be a sweeping statement, but on facts, it cannot be said that the statement is of a sweeping nature for, it is well known that in offences punishable under the sections listed above, bail orders are usually granted after some time and most certainly except in rarest of rare cases after the final report is laid."*

> *Therefore it cannot be said that the detaining authority has not applied its mind to this aspect. It is also submitted that the detenu, as a matter of fact, did not file any bail application. But it must be noted that the detenu was arrested on February 11, 1993 and remanded to custody and on February 16, 1993 itself the detention order was passed. Therefore there was no opportunity for him to file a bail application within this short interval."*

45. In that case the accused was having criminal history of six cases. When the police party went to apprehend the accused and his associates in connection with the offence committed under Sections 148, 341, 302 and 506 (ii) I.P.C., the accused with intention to kill the police inspector, aimed to cut his head with Patta knife but it fell on his forearm causing blood and injury and similarly some of the associates of the accused inflicted injuries to the other police personnel and stones were pelted against them, which also caused injuries to them. Anyhow they were apprehended and the accused was threatening the general public and thereby instilled a sense of fear and panic in their minds. In the case, there was a fearful condition. The accused had tried to kill a police officer, who protects the society from criminal activities. Fearless accused and his associats inflicted injuries to police persons with intention to kill in public view and also at the time of arrest the accused was threatening the general public. He had committed a heinous offence and was having criminal history of six cases. In the backdrop of above facts, the Hon’ble Apex Court found that it was not colorable application of subjective satisfaction of detaining authority as bail can be granted to accused by application of law. Only after 05 days from the arrest, the accused was detained under the provisions of the Act. The facts and circumstances of the case cited by learned A.G.A., differs with the facts of present case.

46. However, regarding the applicability of Section 3 of the Act, 1980, Hon’ble Apex Court has stated in para 6 of the above judgment that :-

> *"6.From the catena of decisions of this Court it is clear that even in the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody;* ***if he has reason to believe on the basis of the reliable material*** *that there is a possibility of his being released on bail* ***and that*** *on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down."*

47. So far as the satisfaction of District Magistrate is concerned, it is subjective to the detaining authority, who is the highest authority of the District. Since the above satisfaction relates to society as well as the community at large, hence the above subjective satisfaction must be basesd on proper assessment of material produced before him to pass the detention order. It should be kept in mind that the available material should be of such degree which may be capable to show the necessity for passing the detention order just to prevent, present imminent danger or prejudicial act in maintenance of public order or which is likely to prevail in future.

48. The report of S.H.O., Police Station Kotwali Nagar, Gonda is available on record which contains the wording of general in nature. No specific effect or counter effect/repercussion in retaliation to act done by accused has been mentioned by the S.H.O. or the police officers, in their reports. In other words the satisfaction of the detaining authority should be recorded with reasoning as the detention order can affect the guarantee given by the Constitution to its citizen in part III thereof. The above satisfaction of the authority must not be based on any vague material or against the mandates of law.

49. Perusal of record and fact of the present case indicates that the offence of murder of an individual was allegedly committed by the

accused-petitioner on 28.01.2023. He was apprehended on 30.01.2023. The detention order has been passed on 17.05.2023. The Investigation of the offence was concluded and the charge sheet was submitted in the court on 27.04.2023. The accused has no criminal antecident. In the report of S.H.O. Police Station Kotwali Nagar, Gonda no specific effect on the society at large has been shown. It can be presumed that post mortem report and the statement of the witnesses would have been available at the early stage of investigation. In the light of above circumstances, it transpires that grounds of detention of petitioner lack reasoning with regard to necessity of immediate detention of petitioner to prevent any prejudicial act against public order. In absence of any situation requiring prevention, the order of the detaining authority becomes punitive and not preventive in nature.

50. Infact the primary object of detention of an accused under the provisions of the Act of 1980 is not to punish him for having done something/offence under the substantive law but to intercept him further before he does so. The detention order is not a penalty for the offence done by the accused in past but it is intended to prempt a person from indulging in future activities, sought to be prohibited, by a relevant law and with a view to prevent the accused from doing prejudicial activities against the public order in future.

51. In the case of ***State of Punjab Vs. Sukhpal Singh, (1990) 1 SCC 35,*** the Hon'ble Apex Court has held as under :-

> *"10. It is submitted that in the instant case, there were sufficient materials to show that the detenu would act in the future to the prejudice of the maintenance of public order, security of the State and the government's effort to curb terrorism. From the nature and contents of his speeches stated in the grounds of detention there was sufficient justification for the inference that he would repeat such speeches if not eventively detained. Again when grievous crime against the community was committed it would surely be subject to*

the penal law and stringent sentences, but at the same time it could be considered unsafe to allow him the opportunities to repeat prejudicial acts during the period the penal process was likely to take. The learned Attorney General refers us to Giani Bakshish Singh v. Government of India, Smt. Hemlata v State of Maharashtras and Raj Kumar Singh v. State of Bihar submitting that the possibility of criminal prosecution was no bar to order any preventive detention and that the court should not substitute its decision or opinion in place of decision of the authority concerned on the question of necessity of preventive detention: [(1981) 4SCC p.656,para21]

> *"A prosecution or the absence of it is not absolute bar to an order of preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. The detaining authority is not the sole judge of what national security or public order requires. But neither is the court the sole judge of the position. When power is given to an authority to act on certain facts and if that authority acts on relevant facts and arrives at a decision which cannot be described as either irrational or unreasonable, in the sense that no person instructed in law could have reasonably taken that view, then the order is not bad and the court cannot substitute its decision or opinion in place of the decision of the authority concerned on the necessity of passing the order."*

52. Taking into consideration the provisions of the Statute, in the light of the law laid down by Hon'ble Apex Court, it can be concluded that the Statute has given the power to Central Government or to the State Government to detain an accused person under the preventive detention, in the circumstances as mentioned in Section 3 (1) and (2) of the Act of 1980. Apart from that, section 3 (3) gives power to District Magistrate or the Commissionerate of Police to pass the detention order after

considering the circumstances prevailing or the likely to prevail in any area within the local limits of their jurisdiction. Such detaining authorities are the highest authorities of the district executive, who may pass the preventive detention order, considering in mind the fundamental rights (particularly Articles 21 and 22 of the Constitution of India) of a person, guaranteed by the Constitution. Apart from that they have been entrusted to maintain the situation of law and order and the public order in the area of their jurisdiction.

53. Although the court cannot review the subjective satisfaction of detaining authority, also the material to pass detention order cannot be assessed by the court but there should be some reliable material before the detaining authority showing that there is a possibility of release of accused on bail and that, on being so released on bail, the detenue would, in all probability indulge in such prejudicial activities.

54. The court cannot review subjective satisfaction of detaining authority. It is for detaining authority to examine the material which was produced before the detaining authority by the police is sufficient to establish prima facie the ground that the accused has acted prejudicial to maintenance of public order and such material is also sufficient to indicate that, if accused will be set free after getting bail, it is more likely that he may commit such act which will be prejudicial to maintenance of public order in future also. If the material so cogent has not been produced by police before detaining authority, passing of preventive detention order by the authority may fall under the category of colourable exercise of power. There may be a situation that if such material so produced by police before the detaining authority, for his subjective satisfaction, lacks merit or are unable to show some specific repercussions or counter effect on society or public at large in consequence of crime committed by the accused, then preventive detention cannot be resorted, otherwise every offender/accused of

heinous offence, like murder, will be behind the bars under the provisions of preventive detention act. In nutshell we may say that in the appropriate case before reaching the conclusion that there is likelihood that the accused will be released on bail, it will be necessary for the detaining authority to ascertain as to whether the act of accused comes under the provisions of Section 3 (1), 3 (2) and 3 (3) of the Act of 1980 or not, and whether there exists any material throwing light that accused, so detained, can commit such act after release on bail, and there is need/urgency to prevent the accused from doing such act. The distinction between the words - law and order and public order has to be kept in mind, which has not been done in this case.

55. Article 22 of the Constitution of India makes provision for protection against arrest and detention in certain cases. Its sub clause (1) and (2) makes following provision :-

> ***"22. Protection against arrest and detention in certain cases***
> *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
>
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*
>
> *(3) Nothing in clauses (1) and (2) shall apply -*
>
> *(a) to any person who for the time being is an enemy alien; or*
>
> *(b) to any person who is arrested or detained under any law providing for preventive detention.*
>
> *(4).....*
>
> *(5).....*
>
> *(6).....*
>
> *(7).....*"

56. The above sub-clause (3) (b) is like exception of above sub clause (1) and (2) of Article 22, it affects the right of detained person adversely. Fundamental Rights are meant for protecting the civil liberties of the citizens, whereas the above exceptional clause keeps the accused under

incarceration without trial. Although the State has been granted the power to curb the civil liberties under the law of preventive detention, they are required to be exercised with due caution and after due consideration and on application of mind to the facts and material of a case in the light of the law on the subject.

57. In the light of the facts, circumstances and material available on record, it is apparent that in the present case there was an offence against the individual person which was committed within the walls of a residential accommodation. Any use of deadly weapon has not been shown in the F.I.R. Commission of any other offence has also not been shown subsequent to commission of murder. The accused was arrested just third day of occurrence, no specific and substantive effect on public at large in consequence of or as a repercussion of murder has been mentioned by the police authorities as well. It has also been shown that the petitioner is not having any criminal history in his credit. The detention order has been slapped after lapse of three and half months. The apprehension that he would be released on bail, apart from being a sure cannot justify the preventive detention in the absence of satisfaction of ingredients of Section 3 (3) of the Act, 1980. The above delay has not been properly explained, whereas, after the conclusion of investigation, charge sheet was submitted in the court on 27.04.2023 itself. Repetition of general and ornamental words regarding the disturbance in public order has been mentioned in the report of sponsoring authority. There seems no proximity in passing the order dated 17.05.2023 from the date of occurrence. The detaining authority has not applied his judicial mind to curb the protection guaranteed by the Constitution against the personal liberty of the petitioner.

58. Having considered the arguments of learned counsels for the petitioner and opposite parties, material available on record and dictums of Hon'ble Apex Court and co-ordinate bench decisions of this Court, as

discussed above, we are of considered view that the impugned order of detention dated 17.05.2023, passed by the District Magistrate, Gonda was without application of mind, hence the detention order is held illegal, which deserves to be set aside.

59. Accordingly, the habeas corpus petition is **allowed.** The detention order dated 17.05.2023, passed by the District Magistrate, Gonda is hereby quashed. The accused/petitioner, if not required in any other offence, be released immediately from the Jail.

Original records be given back to learned A.G.A.

(Narendra Kumar Johari,J.) **(Rajan Roy,J.)**

Order Date : 5th April, 2024
ML/-