# Mrs. Harpreet Kaur Harvinder Singh Bedi vs State Of Maharashtra And Another on 21 January, 1992

## Equivalent citations: AIR1992SC979, (1992)94BOMLR144, 1992CRILJ769, 1992(1)CRIMES589(SC), JT1992(1)SC502, 1992(1)SCALE142, (1992)2SCC177, [1992]1SCR234, AIR 1992 SUPREME COURT 979, 1992 (2) SCC 177, 1992 AIR SCW 835, 1992 CRILR(SC MAH GUJ) 156, 1992 SCC(CRI) 370, (1992) 1 SCR 234 (SC), (1992) 1 JT 502 (SC), 1992 (1) SCR 234, (1992) SC CR R 322, (1992) 1 EFR 384, (1992) MAD LJ(CRI) 572, (1992) 1 SCJ 249, (1992) 1 CURCRIR 626, (1992) 1 CRILC 726, (1992) 2 CHANDCRIC 41, (1992) 1 CRIMES 589, 1992 BOM LR 94 144

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## Bench: S.R. Pandian

ORDER

A.S. Anand, J.

1. Leave is granted in SLP(Crl) No. 3227 of 1991. Writ-Petition No. 1247 of 1991 filed under Article 32 of the Constitution of India is also taken up for disposal along with the aforesaid appeal, which is directed against the judgment of the Division Bench of the Bombay High Court in Criminal Writ Petition No. 597 of 1991, since it is the same order of detention which has been called in question in both the cases.

2. Both the appeal and the Writ-Petition have been filed by the wife of one Harvinder Singh @ Kukku, who has been detained vide order of detention, dated 26th February 1991, issued under the provisions of Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 (hereinafter referred to as the 'Act', The appellant had questioned the detention of her husband through Criminal Writ-Petition No. 597 of 1991 before the Bombay High Court on various grounds. The High Court, however, did not find any merit in the challenge and being of the opinion that there was no infirmity in the order of detention dismissed the Writ-Petition. Appellant has filed an appeal by Special Leave against the High Court judgment and has also questioned the order of detention through a petition under Article 32 of the Constitution. The facts leading to the detention of the detenu as reflected in the grounds of

detention are as follows:

3. The Police personnel, attached to Matunga Police Station, were maintaining a watch on vehicles passing near the fish market with a view to check transportation of illicit liquor On 9th September 1990, a black Fiat Car, bearing registration No. BLD 1674, was seen coming from the direction of Chembur at about 0845 hrs. The police party signalled the driver to a stop. Instead of stopping the car, the detenu, who was driving the car, accelerated the car and drove it straight towards the police party giving rise to an apprehension in the mind of the police party that they were likely to be run over and to save themselves they jumped on to the foot-path. White so driving the car towards the police party, the detenu also hurled abuses at them and shouted that he would kill them. The detenu kept driving the car recklessly and then dashed against a pedestrian causing him injury and even at that time instead of stopping the car shouted that whosoever would come in his way would be killed. The detenu kept on driving the car recklessly and dashed the car against a stationery taxi damaging it As a result of the collision the car came to a stop. As soon as the car stopped, the police party, with a view to apprehend the detenu and the other persons sitting in the car rushed towards them. The detenu and two other persons sitting inside the car jumped out and escaped. A police case came to be registered with the Matunga Police Station against the detenu and two unknown persons for offences under Section 307, 324 read with Section 34 of the Indian Penal Code. The detenu made himself scarce and could not be immediately arrested. He was eventually traced and arrested on 13th September, 1990, when he made a statement admitting that he was engaged in transporting illicit liquor on 9.9.1990 and also admitted his escape after hitting the pedestrian and the stationery taxi after driving the car towards the police party which signalled to stop him. The detenu was produced before the Metropolitan Magistrate on 14.9.1990 and was released on bail on the condition that he should attend the police station between 6.00 to 8.00 p.m. everyday till 24.9.1990. However, the detenu failed to carry out the condition which led to the cancellation of his bail on 24.9.1990 and he was taken into custody. The detenu then moved the Sessions Court against cancellation of his bail. His application was accepted and he was admitted to bail.

4. The motor car of the detenu, bearing registration No. BLD 1674, was seized by the police and from the dicky of the car, 12 rubber tubes and from the rear seat of the car 13 rubber tubes, each containing about 40 litres of illicit liquor were recovered. Samples of the seized illicit liquor were sent to the Chemical Analyst whose report, dated 10th of January 1991, indicated that the samples contained ethyl alcohol 34% v/v in water.

During the investigation of the case, the police recorded statements of four witnesses who were, however, willing to make statements only on the condition of anonymity, fearing retaliation from the detenu in case they deposed against him.

Keeping in view the activities of the detenu and the fact that he had been enlarged on bail, the detaining authority on being satisfied that unless an order of detention was made against the detenu, he was likely to indulge in activities prejudicial to the maintenance of 'public order' in future also, made an order of detention on 26th February 1991. The grounds of detention were served on the detenu. The order of the detention was confirmed by the State Government after considering the report of the Advisory Board constituted under Section 12(1) of the Act. The order of detention was

questioned before the High Court, as already noticed through Criminal Writ Petition No. 597 of 1991, unsuccessfully.

5. Two basic arguments have been raised by Dr. Chitale before us to question the order of detention.

The thrust of the first argument is that the activities of the detenu could be said to be prejudicial only to the maintenance of "law and order" and not prejudicial to the maintenance of "Public Order". learned Counsel stressed that the activities, which had been attributed to the detenu, howsoever reprehensible they may be, had no impact on the general members of the community and therefore could not be said to disturb the even tempo of the society and as such his detention for acting in a manner prejudicial to 'public order' was unjustified.

The second argument of the learned Counsel is based on the proviso to Section 3(2) of the Act, which according to the learned Counsel, prohibited the Slate Government to make an order of detention, in the first instance exceeding three months and since the order of detention in the instant case was for a period exceeding three months, it was categorised as bad in law and invalid. No other contention was pressed.

6. "Public Order" or "Law and Order" are two different and distinct concepts and there is abundance of authority of this Court drawing a clear distinction between the two. With a view to determining the validity or otherwise of the order of detention, it would be necessary to notice the difference between the two concepts.

7. In Ram Manohar Lohia v. State of Bihar speaking for the majority, Hidayatullah J. pointed out the distinction in the following words:

> One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

8. In Arm Ghosh v. State of West Bengal again Hidayatullah J. peaking for the Court, pointed out that what in a given situation may be a matter covered by law and order, on account of its impact on the society may really turn out to be one of 'public order'. It was observed:

> Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chambermaids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other

> man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. [p. 100]

9. A Constitution Bench in Madhu Limaye v. Ved Murti again dealt with the question and it was observed:

> In our judgment, the expression 'in the interest of public order' in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within order publique as described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression 'in the interest of public order" is very wide.
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> [p. 756]

10. In Kanu Biswas v. State of West Bengal , this Court opined: 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 "ordre publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, 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 society undisturbed?

[p. 834]

11. In Ashok Kumar v. Delhi Administration this Court re-examined the question and observed:

> 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, while in another it might affect public 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.

[pp. 409-10]

12. In Subhash Bhandari v. District Magistrate, Lucknow , a Division Bench of this Court has held:

> A solitary act of omission or commission can be taken into consideration for being subjectively satisfied, by the detaining authority to pass an order of detention if the reach, effect and potentiality of the act is such that it disturbs public tranquillity by creating terror and panic in the society or a considerable number of the people in a specified locality where the act is alleged to have been committed. Thus it is the degree and extent of the reach of the act upon the society which is vital for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order.
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> [pp. 686-87]

13. It is not necessary to multiply the authorities on this point.

14. From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to 'public order' or belong to the category of being prejudicial only to ' law and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention.

15. Dr. Chitale did not dispute that if the activities of the detenu have the potential of disturbing the even tempo of the society or community, those activities would be prejudicial to maintenance of 'public order', he however, relied upon certain judgments to urge that "bootlegging" activity of the detenu in the instant case, could not affect public tranquillity and did not have any potential of affecting public order to justify his detention.

Reliance was placed on Om Prakash v. Commissioner of Police and Ors. [1989] Supp. 2 SCC 576; Rashidmiya v. Police Commissioner, Ahmedabad and Anr. and Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr. [1989] Supp.1 SCC 322 and it was urged that in these cases an activity of "bootlegging" was not held to fall within the mischief of being prejudicial to 'public order'.

16. Indeed, in Piyush Kantilal Mehta, Om Prakash and Rashidmiya cases (supra), the Court found that the activities of the detenu, a bootlegger in those cases, as detailed in the grounds of detention, were of a general and vague nature and those activities did not adversely affect the maintenance of

'public order' under Section 3(4) of the Gujarat Prevention of Anti-Social Activities' Act, 1985. The Bench in Rashidmiya and Om Parkash's cases (supra) relied upon the judgment in Piyush Kantilal Mehta's case and on the facts of those cases quashed the order of detention.

In Piyush Kantilal Mehta's case (supra), the allegations, in the ground of detention, were that the detenu was a bootlegger, who was indulging in the sale of foreign liquor and that he and his associates were also using force and violence and beating innocent citizens creating a sense of terror. The detenu was caught possessing English liquor with foreign markings as well as foreign liquor. The Court found that the detenu was only a bootlegger and he could not be preventively detained under the provisions of the Gujarat Prevention of Anti-Social Activities' Act, 1985 unless as laid down in Sub-Section (4) of Section 3 of that Act, his activities as a bootlegger had the potential of affecting adversely or were likely to affect adversely, the maintenance of 'public order' and on the peculiar facts of the case , it was found that the alleged activities of the detenu did not affect 'public order' but created only a law and order problem.

Dr. Chitale then placed reliance on State of U.P. v. Hari Shankar Tewari ; Ahmedhussain Shaikhhussain v. Commissioner of Police, Ahmedabad and Anr. ; T. Devaki v. Government of Tamil Nadu and Ors. ; Ashok Kumar v. Delhi Administration and Ors. ; but none of these judgments lay down tests different than the ones which we have culled out from the judgments of this Court referred to earlier. Those cases were decided on their peculiar facts. The courts were very much alive to the conceptual difference between activities prejudicial to law and order and those prejudicial to public order and since on facts it was found that the activities of the detenu were not prejudicial to 'public order', the orders of detention were quashed.

17. Crime is a revolt against the whole society and an attack on the civilization of the day. Order is the basic need of any organised civilized society and any attempt to disturb that order affects the society and the community. The distinction between breach of 'law and order' and disturbance of 'public order' is one of degree and the extent of reach of the activity in question upon the society. In their essential quality, the activities which affects 'law and order' and those which disturb 'public order' may not be different but in their potentiality and effect upon even tempo of the society and public tranquillity there is a vast difference. In each case, therefore, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of 'public order' or only 'law and order'.

18. There is no gain saying that in the present state of law, a criminal can be punished only when the prosecution is able to lead evidence and prove the case against an accused person beyond a reasonable doubt. Where the prosecution is unable to lead evidence to prove its case, the case fails, though that failure does not imply that no crime had been committed. Where the prosecution case fails, because witnesses are reluctant on account of fear of retaliation to come forward to depose against an accused, obviously, the crime would go unpunished and the criminal would be encouraged. In the ultimate analysis, it is the society which suffers. Respect for law has to be maintained in the interest of the society and discouragement of a criminal is one of the ways to maintain it. The objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial affect on the society as a

whole or not. If the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of 'public order' and are not merely prejudicial to the maintenance of 'law and order'.

19. The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981 was enacted to provide for preventive detention of slumlords, bootleggers and drug-offenders for preventing their dangerous activities prejudicial to the maintenance of 'public order'.

Section 2(a) defines the meaning of the expression "acting in any manner prejudicial to the maintenance of public order" and reads as follows:

> (a) "acting in any manner prejudicial to the maintenance of public order" means
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> (i) in the case of a slumlord, when he is engaged, or is making preparations for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order,
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> (ii) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order,
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> (iii) in the case of drug-offender, when he is engaged or is making preparations for engaging, in any of his activities as drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order, Explanation: For the purpose of this Clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm of a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health;

20. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse affect on 'public order'. It provides that if any of the activities of a person referred to in Clauses [(i)-(iii) ] of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or a wide-spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether 'public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.

21. Let us now consider the facts of the instant case.

The substance of the grounds on which detention has been ordered is that the detenu is a bootlegger and in furtherance of his activities and to escape from the clutches of law, he even tried to run over,

by his speeding vehicle, the police party, which tried to signal him to a stop, exhorting all the time that he would kill anyone who would come in his way. He continued to drive in a reckless speed and dashed against a pedestrian causing injuries to him, where again he had exhorted that anyone who would come in his way would meet his death. Four witnesses-A,B,C,D,-who agreed to give statements to the police on conditions of anonymity, clearly stated that they would not depose against the detenu for fear of retaliation as the detenu had threatened to do away with anyone who would depose against him. The evidence of these witnesses shows that the detenu was indulging in transporting of illicit liquor and distributing the same in the locality and was keeping arms with him while transporting liquor. The activities of the detenue, therefore, were not merely "bootlegging" as was the position in Om Prakash, Rashidmiya and Piyush Kantilal Mehta's cases (supra) but went further to adversely affect the even tempo of the society by creating a feeling of insecurity among those who were likely to depose against him as also the law enforcement agencies. The fear psychosis created by the detenu in the witnesses was aimed at letting the crime go unpunished which has the potential of the society, and not merely some individual, to suffer. The activities of the detenu, therefore, squarely fall within the deeming provision enacted in the explanation of Section 2(a) of the Act, and it therefore, follows as a logical consequence that the activities of the detenu were not merely prejudicial to the maintenance of 'law and order' but were prejudicial to the maintenance of "public order". The first argument raised by Dr. Chitale against the order of detention, therefore, fails.

22. Coming now to the second argument of Dr. Chitale to the effect that proviso to Section 3(2) of the Act, prohibited the State Government to make an order of detention in the first instance, exceeding three months, and since the order of detention in the instant case had been made for a period exceeding three months, it was vitiated.

Section 3 reads as follows:

> Power to make orders detaining certain persons. (1) 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 maintenance of public order, it is necessary so to do, make an order directing that such person is detained.
>
> (2) 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 (1), exercise the powers conferred by the said Sub-section:
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> Provided that the period specified in the 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.

> (3) When any order is made under this section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government, 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.

A plain reading of the Section shows that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by Sub-Section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in Sub-section (1), exercise the powers of the State Government as conferred by Sub-Section (1). The proviso to Sub-Section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under Sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under Sub-Section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails.

24. We are, in the facts and circumstances of the case, satisfied that the Division Bench of the Bombay High Court rightly dismissed the Criminal Writ Petition No. 597 of 1991 and that order does not call for any interference. The Appeal fails and is dismissed.

25. Writ Petition No. 1247 of 1991 also fails and is hereby dismissed since the order of detention does not suffer from any infirmity.