Pesala Nookaraju vs The Government Of Andhra Pradesh on 16 August, 2023

Author: M.M. Sundresh

Bench: Dhananjaya Y. Chandrachud, M.M. Sundresh

2023INSC734

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. OF 2023
(Arising out of S.L.P. (Criminal) No. 9492 of 2023)

PESALA NOOKARAJU …APPELLANT(S)

VERSUS

THE GOVERNMENT OF ANDHRA PRADESH & ORS. …RESPONDENT(S)

JUDGMENT

J.B. PARDIWALA, J. :

1. Leave granted.

2. This appeal is at the instance of a detenu, preventively detained under Section 3(2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (1 of 1986) (for short, 'the Act 1986') and is directed against the order passed by a Division Bench Reason: Writ Petition No. 33638 of 2022 filed by the appellant herein by which the Division Bench rejected the writ petition and thereby declined to interfere with the order of preventive detention passed by the District Collector, Kakinada District, Andhra Pradesh dated 25.08.2022 in exercise of his powers under Section 3(2) of the Act 1986.

FACTUAL MATRIX

3. The order of detention dated 25.08.2022 passed by the respondent No. 2 reads thus :-

"ORDER OF DETENTION (UNDER SECTION 3(2) OF "THE ANDHRA PRADESH PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986").

Read:-

1) Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act,1986.

2) G.O. Rt. No. 1089, General Administration (SC-I) Dept., Dated 09.06.2022

3) Superintendent of Police, Kakinada District C.No.78/DSE0/SEB/ 2022, Dated 05.08.2022.

Whereas information is laid before me that Sri Pesala Nookaraju, S/o. Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram, Tuni Mandal, Kakinada District is an habitual offender and committing offences against AP Prohibition (Amendment) Act, 2020 and was arrested in 4 cases i.e. from January, 2021 to March, 2022, is indulging himself in committing the offences of distributing, storing, Transporting and selling ID Liquor which causes huge damage to the public health as well as public peace and tranquility, these acts are in contravention of Section 7(B) read with 8(B) of A. P. Prohibition (Amended) Act, 2020, which comes under the category of "BOOTLEGGER" as defined U/Sections 2 (b) of "The Andhra Pradesh Prevention of Dangerous activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986.

The details of cases are as follows:

1) SEB Station, Tuni Cr. No. 13/2021, Dated: 06.01.2021, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.

2) SEB Station, Tuni Cr. No. 376/2021, Dated: 13.08.2021, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.

3) SEB Station, Tuni Cr. No. 532/2021, Dated: 30.09.2021, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.

4) SEB Station, Tuni Cr. No. 213/2022, Dated: 09.03.2022, U/sec. 7 (B) R/w 8 (B) of AP Prohibition (Amendment) Act, 2020.

Hence, it is necessary to make an order invoking powers conferred under Sec. 3 (2) of the Act (Act No. 1 of 1986) directing that Sri Pesala Nookaraju, S/o. Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram Village, Tuni Mandal, Kakinada District to be detained in Central Prison, Rajamahendravaram, East Godavari District with immediate effect, with a view to prevent him from

acting in any manner prejudicial to maintenance of public health and public peace & tranquility.

Whereas, I am satisfied with the above material and information that the person named Sri Pesala Nookaraju, S/o Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N.S. Venkatapuram, Tuni Mandal, Kakinada District is acting and also calculated to act in a manner prejudicial to the maintenance of public order and it is necessary to prevent him from acting further by directing the said person to be detained.

Therefore, I, Dr. Kritika Shukla, I.A.S., Collector & District Magistrate, Kakinada District in exercise of the powers conferred upon me under Sub Section 2 of Section 3 of the A. P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 read with G. O. Rt. No. 1089 General Administration (SC-I) Dept. Dated 09.06.2022 do hereby direct under Sub Section (1) of Section 3 of the said Act that Sri Pesala Nookaraju, S/o Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram Village, Tuni Mandal, Kakinada District shall be detained in Central Prison, Rajamahendravaram, East Godavari District until further orders to be received from the Government."

4. The grounds of detention dated 25.08.2022 furnished to the appellant herein along with the order of detention referred to above read thus:-

> "Whereas information laid before me reveals that you Sri Pesala Nookaraju, S/o Bulliyya, Age: 46 Years, Caste: SC (Mala), R/o N. S. Venkatapuram, Tuni Mandal, Kakinada District an habitual offender and is committing offences against A.P. Prohibition (Amendment) Act, 2020 time and again though several cases were booked against you. It is evident that you were arrested in four cases from January, 2021 to March, 2022. You have been distributing, storing, Transporting and selling ID Liquor in and around of N. S. Venkatapuram village and surrounding places of Tuni Mandal which causes huge damage to the public health as well as public peace and tranquillity.
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> The following are the Grounds for Detention:
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> GROUND No. 1 (Cr. No. 13/2021, dated 06.01.2021 of U/s 7(B) r/w 8(B) of A. P. Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District.
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> On 06.01.2021, at about 06.00 A.M., while the Sub Inspector, Special Enforcement Bureau, Tuni along with staff conducting raids for detection of Proh. & Excise offences at N.S. Venkatapuram Village of Tuni Mandal and found one person with one mica hand bag in his right hand, near Ambedkar statue of SC Peta. On seeing the Police Party, he left the mica bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of the constables and the Enforcement Sub-Inspector sent one constable to secure mediators but he come back and informed that nobody is came forward to stood as mediators. Then Sub-Inspector SEB got opened the bag and found one polythene cover containing five (5) liters of

I.D. liquor. When enquired with the accused about his identity particulars, he voluntarily disclosed that his name is Pesala Nookaraju S/o Bulliyya, Age: 45 Years, Caste: SC (Mala) R/o N.S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A. P. Prohibition (Amendment) Act, 2020 and arrested the accused and registered the case against the accused and seized the ID arrack. Then drawn 300 ml I.D liquor as sample for the purpose of chemical examination, from the seized ID arrack into a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized ID Liquor, under the cover of special report drafted on the spot, by the Enforcement Sub Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide. C. E. No. 366/2021 in Sl. No. 5890 dated 04.03.2021.

GROUND No. 2 (Cr. No. 376/2021, dated 13.08.2021 of U/s 7(B) r/w 8(B) of A. P. Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District.

On 13.08.2021, at about 09.30 A.M., while the Sub Inspector, Special Enforcement Bureau, Tuni along with staff conducting raids for detection of Proh. & Excise offences in N.S. Venkatapuram village of Tuni Mandal and found one person standing with one gunny bag to his right shoulder near Ambedkar statue of SC Peta. On seeing the Police Party, he left the Gunny bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of constables and the Enforcement Sub-Inspector sent one constable to secure mediators but he came back and informed that nobody is came forward to stood as mediators. Then Sub Inspector SEB got opened the bag and found three polythene covers each containing 10 liters total 30 liters of I.D. liquor. When enquired with the accused about his identity particulars, he voluntarily disclosed that his name is Pesala Nookaraju S/o Buiiliyya, Age:

45 Years Caste: SC (Mala), R/o N. S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A. P. Prohibition (Amendment) Act 2020 and arrested the accused and registered the case against the accused and seized the ID arrack. Then drawn 300 ml I.D. liquor as sample for the purpose of Chemical Examination, from seized arrack into a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized ID liquor, under the cover of Special Report drafted on the spot, by the Enforcement Sub- Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide C.E. No. 2381/2021 in Sl. No. 41632 dated

10.11.2021.

GROUND NO. 3 (Cr. No. 532/2021, dated 30.09.2021 of U/s 7(B) r/w 8(B) of AP Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District):

> On 30.09.2021, at about 08.05 P.M., while the Special Enforcement Bureau, SHO, Tuni along with Technical wing sub-Inspector and staff conducting raids for detection of Proh. & Excise offences at near Ambedkar statue of SC Peta N.S. Venkatapuram village of Tuni Mandal and found one person came by walk with one mica bag in his right hand, on seeing the Police Party, he left the mica bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of constables and the Enforcement Sub Inspector sent one constable to secure mediators but he come back and informed that nobody is came forward to stood as mediators. Then Sub Inspector SEB got opened the bag and found one polythene cover containing 10 liters I. D. liquor. When enquired with the accused about his identify particulars, he voluntarily disclosed that his name is Pesala Nookaraju S/o Bulliyya, Age: 45 Years, Caste: SC (Mala) R/o N. S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A.P. Prohibition (Amendment) Act 2020 and arrested the accused and registered the case against the accused and seized the ID arrack. Then drawn 300 ml I. D. liquor as sample for the purpose of chemical examination, from the seized ID arrack in to a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized I.D. liquor, under the cover of Special Report drafted on the spot, by the Enforcement Sub-Inspector.
>
> The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that “It is illicitly Distilled liquor unfit for human consumption and injurious to health” and issued an analysis report vide C. E. No. 2796/2021 in Sl. No. 45126 dated 27.11.2021.

GROUND No. 4 (Cr. No. 213/2022, dated 09.03.2022 of U/s 7(B) r/w 8(B) of AP Prohibition (Amendment) Act- 2020 of SEB Station, Tuni, Kakinada District):

> On 09.03.2022, at about 10.00 A.M., while the Special Enforcement Bureau, SHO Tuni along with staff conducting raids for detection of Proh. & Excise offences at near Ambedkar statue of SC Peta N. S. Venkatapuram Village of Tuni Mandal and found one person came by walk with one mica bag in his right hand, on seeing the Police Party he left the mica bag which is in his hand and tried to ran away. SI SEB stopped the person with the help of constables and the Enforcement Sub Inspector sent one constable to secure mediators but he come back and informed that nobody is came forward to stood as mediators. Then Sub Inspector SEB got opened the bag and found one polythene cover containing 10 ltrs I. D. liquor. When enquired with the accused about his identity particulars he voluntarily disclosed that his name is Pesala

Nookaraju S/o Bulliyya, Age: 46 Years Caste:

SC (Mala) R/o N.S. Venkatapuram Village, Tuni Mandal and explained him that the possession, transportation, selling of ID liquor is an offence under A.P. Prohibition (Amendment) Act 2020 and arrested the accused and registered the case against the accused and seized the ID arrack. Then drawn 300 ml I. D. liquor as sample for the purpose of chemical examination from the seized ID arrack into a separate bottle and sealed the sample bottle and mica bag with the remaining ID liquor and pasted identity slips duly signed by the SI SEB and staff and seized ID liquor under the cover of Special Report drafted on the spot by the Enforcement Sub-Inspector.

The sample was sent to Chemical Examiner, Kakinada for analysis and the same was analysed and the Chemical Examiner opined that "It is illicitly Distilled liquor unfit for human consumption and injurious to health" and issued an analysis report vide C. E. No. 851/2022 in Sl. No. 13027 dated 04.04.2022.

Thus I am satisfied from the material placed before me that you fall under the category of "BOOTLEGGER" as defined in Sec. 2(b) of "The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986" and you are a fit person to be detained U/Sec 3(2) of the said Act and accordingly I will issue orders with a view to preventing you from acting in any manner prejudicial to the maintenance of the public order."

5. Thus, from the aforesaid, it is evident that the District Collector, Kakinada District was subjectively satisfied based on the materials on record that the activities of the appellant detenu were prejudicial to the maintenance of public order.

According to the detaining authority i.e. the respondent No. 2, the appellant is a "bootlegger" as defined under Section 2(b) of the Act 1986 and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was felt necessary that the appellant be preventively detained.

6. The appellant detenu being aggrieved by the order of preventive detention preferred Writ Petition No. 33638 of 2022 in the High Court of Andhra Pradesh seeking a writ of Habeas Corpus. The High Court vide its impugned order declined to interfere and accordingly rejected the writ petition.

7. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Ms. Bhabna Das, the learned counsel appearing for the appellant detenu, in her written submissions has stated thus:-

"I. A Preventive Detention Order Can Only Be Issued For 3 Months At A Time 1.1 The Petitioner herein has been preventively detained in terms of an order dated 25.08.2022 issued by the District Collector, Kakinada, under S. 3(2) of the AP Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (the "AP Act"). While the order dated 25.08.2022 did not specify any period of detention, the State Government, vide GO dated 18.10.2022, directed that the Petitioner shall be detained for a period of 12 months at a stretch.

1.2 The above orders are contrary to the proviso to S. 3(2) of the AP Act, which states that "...the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary to do so, amend such order to extend such period from time to time by any period not exceeding three months at any one time". 1.3 This provision has been interpreted by this Hon'ble Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh, (2015) 13 SCC 722, to mean that a detention order can only be in force for 3 months in the first instance. The Government can extend the period for not more than 3 months at a time so that there is periodic assessment and review as to whether continuous detention of a person is necessary. Consequently, a detention order passed for 12 months at a stretch was quashed as being deterrent to the rights of the detenue [para 12-

15]. This judgment has subsequently been followed by this Hon'ble Court in order dated 17.04.2017 in Criminal Appeal No. 727/2017 titled 'S. Penchalamma v. State of Andhra Pradesh & Ors.' and Lahu Shrirang Gatkal v. State of Maharashtra, (2017) 13 SCC 519. In the present case, the Petitioner has now spent about 10.5 months in detention without any review as to whether his continued detention is necessary.

1.4 The State has contended that the proviso to S. 3(2) refers to the period for which the State Government can delegate its powers to a District Magistrate or Commissioner of Police, relying on the judgments of Harpreet Kaur v. State of Maharashtra, (1992) 2 SCC 177; T. Devaki v. Government of Tamil Nadu, (1990) 2 SCC 456; and Aravind Choudhary v. State of Telangana, order dt. 05.05.2017 in Crl. Appeal No. 924/ 2017. It is submitted that these judgments are inapplicable in the facts of the present case. 1.5 First, all the judgments cited by the Respondents were concerned with the validity of detention orders passed directly under S. 3(1) of the concerned statute [see para 2 of Harpreet Kaur; para 1 of T. Devaki, and page 2 of Aravind Chaudhary]. An argument was raised in these cases that the detention orders [under S. 3(1)] could not be issued for a period exceeding 3 months as per the proviso to S. 3(2). It was in this context that the findings in paras 33 of Harpreet Kaur, para 8 of T. Devaki and in Aravind Choudhary were rendered. These findings cannot therefore be applied to orders issued in exercise of delegated powers under S. 3(2) of the Act. This is evident from the observation of this Hon'ble Court in Aravind Choudhary that: "...the limit of three months is applicable to Section 3(2) of the above said Act and not to Section 3(1). This is clear from three judge Bench judgment of this Court in 1990 (2) SCC 456 T. Devaki Vs. Government of Tamil Nadu...".

On the other hand, the detention order in Cherukuri Mani was issued by the District Magistrate [para 2] i.e. under S. 3(2) of the AP Act, and hence this judgment is directly on the point.

1.6 Secondly, the interpretation sought to be advanced by the State renders the proviso to S. 3(2) meaningless. In terms of S. 3(3) of the AP Act, the officer under S. 3(2) is required to "forthwith" report the detention order and grounds to the Government 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 Government". S. 3(3) therefore checks the issuance of preventive detention orders in exercise of delegated powers by immediately subjecting them to scrutiny and confirmation by the State Government.

1.7 Restricting the time period for which the State Government can delegate its powers to such an officer to 3 months at a time neither curbs any mischief nor serves any fruitful purpose. This is so since an order under S. 3(2) is much shorter-lived, and lapses in 12 days unless approved by the Government. Pertinently, as per S. 3(2) and 3(3) of the Preventive Detention Act, 1950 (repealed), on which the State statutes are modelled, also such orders were valid for 12 days. However, no time period was specified therein for delegation of powers by the Central Government. It is therefore absurd that such a condition should be imposed on the State Government. Accordingly, the proviso to S. 3(2) can be given a meaningful object and purpose only if the limitation of 3 months at a time is applied to the period of detention, and not to the period of delegation.

1.8 Thirdly, Art. 22 of the Constitution places some importance on curtailing the period of preventive detention to 3 months unless certain stringent conditions are satisfied. Art. 22(4) stipulates that no law can provide for preventive detention for a period longer than 3 months unless the opinion of an Advisory Board is obtained. Further, Art. 22(7)(a) requires the Parliament to pass a law prescribing the circumstances under which persons can be detained for longer than 3 months without obtaining the opinion of an Advisory Board. The proviso to S. 3(2) and its interpretation in Cherukuri Mani are therefore expressions of the notion that a preventive detention order ought to be reviewed after 3 months, a limitation inherent in Art. 22 itself.

1.9 Lastly, if there is any ambiguity in a provision in a preventive detention statute or the same is capable of two possible interpretations, then the construction which enures to the benefit of the detenue and furthers the protection to life and liberty guaranteed under Art. 21 must be favoured. Preventive detention law/Art. 22 is merely an exception to the rule under Art. 21, and must therefore be confined within narrow limits. Consequently, the interpretation of S. 3(2) proviso in Cherukuri Mani ought to be preferred over the judgments relied upon by the Respondents. Reference may be had to the following case law:

(a) M. Ravindran v. Intelligence Officer, Directorate of Intelligence, (2021) 2 SCC 485.

(b) Rekha v. State of Tamil Nadu, (2011) 5 SCC 244 [paras 13-17 & 21].

II. The Detention Order is Based on Stale Material 2.1 It is a settled position of law that an order of preventive detention can only be based on criminal antecedents which have a proximate nexus with the immediate need to detain an individual. An order based on stale incidents is therefore not sustainable. Reliance is placed on the following judgments:

(a) Khaja Bilal Ahmed v. State of Telangana & Ors., (2020) 13 SCC 632 [paras 21-23 & 28]

(b) Mallada K. Sri Ram v. State of Telangana & Ors., 2022 SCC OnLine SC 424 [paras 11-15].

2.2 In Mallada K. Sri Ram, the detention order dated 19.05.2021 was based on 2 FIRs dated 15.10.2020 and 17.12.2020. The detenue was released on bail in the 1st FIR on 08.01.2021 and in the 2nd FIR on 11.01.2021 [paras 4 & 5]. This Hon'ble Court was pleased to quash the said detention order on the ground that it was passed nearly 7 months after the 1st FIR and 5 months after the 2nd FIR, and was therefore based on stale material and demonstrated non-application of mind [para 11]. This judgment is squarely applicable in the facts of this case. 2.3 The detention order dated 25.08.2022 in the present case is based on the following FIRs against the Petitioner:

(a) FIR No. 1/(2021)-Tuni-13 dated 06.01.2021, lodged 1 year 7 months and 20 days prior to the detention order. The Petitioner was released on bail in this matter on 08.01.2021.

(b) FIR No. 8/(2021)-Tuni-376 dated 13.08.2021, lodged 1 year and 12 days prior to the detention order. The Petitioner was released on bail in this matter on 18.08.2021.

(c) FIR No. 10/(2021)-Tuni-532 dated 30.09.2021, lodged 10 months and 26 days prior to the detention order. The Petitioner was released on bail in this matter on 07.10.2021.

(d) FIR No. 3/(2022)-Tuni-213 dated 09.03.2022, lodged 5 months and 17 days prior to the detention order. The Petitioner was released on bail in this matter on 08.04.2022.

2.4 There is no allegation regarding the Petitioner's conduct during the 4 month and 18 day interregnum between him being released on bail in the last FIR (08.04.2022) and being taken into preventive detention (25-26.08.2022). It is therefore apparent that the grounds on which the Petitioner was detained are stale.

III. Ordinary Law and Order is Sufficient to Deal with the Situation and there is no Prejudice to the Maintenance of Public Order 3.1 A detention order under S. 3(1) or 3(2) of the AP Act can be issued inter alia against a "bootlegger" to prevent him from "acting in any manner prejudicial to the maintenance of public order". It is submitted that the Petitioner is not a 'bootlegger' as defined under S. 2(b) of the AP Act. There is no material to show that he was engaged in distillation,

manufacture, storage, import/ export, sale or distribution of illicitly distilled liquor or was a mastermind engaged in any organized or systemic criminal activity or part of a cartel. The Petitioner has repeatedly asserted that he was merely a daily wage labourer working as a coolie. 3.2 Without prejudice, this Hon'ble Court has, in a catena of judgments, held that a person cannot be detained merely because he is a bootlegger, unless the activity also affects public order. Pertinently, it was alleged that the detenus in these cases were using dangerous weapons/ arms, force and violence, had created an atmosphere of fear and terror amongst the residents in the area. These were nevertheless not considered grievous enough to affect 'public order' or warrant preventive detention.

(a) Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City & Anr. (1989) Supp (1) SCC 322 [paras 14-18]

(b) Omprakash v. Commissioner of Police & Ors., (1989) Supp (2) SCC 576 [paras 1, 6-11]

(c) Rashidmiya @ Chhava Ahmediya Shaik v. Police Commissioner, Ahmedabad & Anr., (1989) 3 SCC 321 [paras 3-6 & 16-21]

(d) Ahmedhussain Shaikhhussain @ Ahmed Kalio v. Commissioner of Police, Ahmedabad & Anr, (1989) 4 SCC 751 [paras 3, 11, 13- 15]. 3.3 As per the explanation to S. 2(a), the activity in question must cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health" to be prejudicial to public order. The expression 'public order' is different from general 'law and order' and must be interpreted narrowly. Acts affecting public order must be such as to create panic, fear or insecurity among the public at large, destroy the even tempo of life of the community, cause serious disturbance to public tranquility, the society and community at large. Where the ordinary law of the land is sufficient to deal with the offences in question, recourse to preventive detention is illegal.

(a) Rekha v. State of Tamil Nadu, (2011) 5 SCC 244 [paras 13- 17, 21, 23 & 29-35].

(b) Munagala Yadamma v. State of Andhra Pradesh & Ors, (2012) 2 SCC 386 [paras 7-9]

(c) Banka Sneha Sheela v. State of Telangana & Ors., (2021) 9 SCC 415 [paras 12-15, 19-25, 29-30 & 32] 3.4 In the present case, 4 FIRs have been filed against the Petitioner for offences under the AP Prohibition Act. Investigation is complete and chargesheets have also been filed and hence the matters are ready for trial. These cases involve ordinary 'law and order' problems. The Petitioner will undergo the requisite punishment if eventually convicted by the competent Court. However, he cannot be preventively detained and prevented from facing trial merely because he is allegedly a 'habitual offender' or has secured bail in all the cases.

3.5 The chemical analysis of the samples allegedly taken from the Petitioner state that they are "unfit for human consumption and injurious to health". The Impugned Judgment erroneously holds that this is sufficient to arrive at the subjective satisfaction that the Petitioner was required to be preventively detained, without examining whether the ingredients of the explanation to S. 2(a) regarding prejudice to 'public order' are satisfied. The total quantity of ID liquor found in the

Petitioner's possession in all 4 cases is allegedly 55 litres, which is a relatively small quantity. There is no imputation that any person consumed any liquor from the Petitioner or endangered his life or suffered any serious health issues as a result. Mere lab reports cannot be determinative of whether the alleged criminal activity is of such magnitude or intensity as to constitute a "grave widespread danger to public health". 3.6 Pertinently, in Rekha v. State of Tamil Nadu (supra), the detenu was accused of selling expired drugs after tampering with labels [para 2]. In Munagala Yadamma (supra), the allegation was of bootlegging/ illicitly distilling liquor. No doubt such expired drugs or illicitly distilled liquor may be unfit for human consumption and may even affect the health of those consuming such products. Nevertheless, these were not considered as being prejudicial to the maintenance of public order. Rather, the ordinary provisions of the IPC/Drugs and Cosmetics Act and the AP Prohibition Act, as the case may be, were deemed sufficient to deal with these situations. It is therefore submitted that the preventive detention orders against the Petitioner be quashed, and he be permitted to face trial as per ordinary due process.

IV. The Detention Orders are Disproportionate and Suffer from Non Application of Mind 4.1 A detention order under S. 3(1) or 3(2) of the AP Act can only be issued only if "it is necessary so to do" to prevent a person from acting in a manner prejudicial to public order. The doctrine of proportionality, which requires that the least restrictive means be used when imposing any restraint on a fundamental right, is therefore built into the statute. [See Madhyamam Broadcasting Ltd. v. Union of India & Ors., 2023 SCC OnLine SC 366 (para 85)] 4.2 In the present case, the Petitioner was granted bail in all cases against him, after giving an opportunity of hearing to the State. If the Petitioner subsequently committed any offence or violated any condition of bail, the State ought to have approached the concerned Court for cancellation of bail. Issuance of a preventive detention order which drastically curtailed the Petitioner's right to liberty under Art. 21 is certainly neither the most suitable nor the least restrictive method of preventing the Petitioner from engaging in any further alleged criminal activity. 4.3 Without prejudice, a person ought to be preventively detained only for the period absolutely necessary in order to achieve the object in question i.e. prevent public disorder. While the maximum period of detention can be 12 months as per S. 13 of the AP Act, the State nevertheless has the discretion to provide for a lesser period, or even revoke/ modify a detention order under S. 14. However, in the present case, Respondent No. 1 has, vide GO dated 18.10.2022, directed that the Petitioner be detained for the maximum period of 12 months without any application of mind or providing any reasons as to why this is necessary.

4.4 Further, the grounds for detention and order dated 25.08.2022 were admittedly issued on the basis of a proposal dated 05.08.2022 made by the Superintendent of Police, Kakinada. A bare perusal of this proposal shows that the grounds for detention therein are identical to the grounds of detention appended to the order dated 25.08.2022. It therefore appears that the order dated 25.08.2022 was passed placing blind reliance on the proposal of the SP, without any independent application of mind. The delegated power and discretion vested in the District Magistrate under S. 3(2) has virtually been further sub-delegated to the Superintendent of Police, which is impermissible.

V. A Habeas Corpus Petition is Maintainable on behalf of the Petitioner 5.1 The Petitioner had preferred W.P. No. 33638/ 2022 dated 13.10.2022 before the Hon'ble High Court of Andhra

Pradesh inter alia praying for the closure of his detention order dated 25.08.2022 and his release from prison. Since confirmation order vide G.O. Rt. No. 2190 dated 18.10.2022 was issued by Respondent No. 1 thereafter, the Petitioner subsequently amended his Petition to challenge the order dated 18.10.2022 as well.

5.2 The Respondents have contended that a writ of habeas corpus is not maintainable in the present case relying on the judgment of Home Secretary (Prison) v. H. Nilofer Nisha, (2020) 14 SCC 161. The said judgment was dealing with the issue of whether a habeas corpus would lie to secure release of a person who is undergoing imprisonment sentence as per Court orders, and had not been illegally detained [paras 1 & 17]. This is completely different from preventive detention. In fact, in para 16 of the said judgment itself it has been held that habeas corpus is often used as a remedy in preventive detention cases as the said order can only be challenged in writ jurisdiction. The Writ Petition filed by the Petitioner was therefore maintainable.

6. In view of the above, it is respectfully prayed that the Impugned Judgment and order dated 07.03.2023 be set aside, the order dated 25.08.2022 passed by Respondent No. 2 and the confirmation orders dated 01.09.2022 and 18.10.2022 issued by Respondent No. 1 be quashed, and the Petitioner be released forthwith from Central Prison, Rajamahendravaram, East Godavari District, Andhra Pradesh.

7. It is further prayed that in the event the Petitioner is convicted in any of the FIRs on which the detention order was based, then the period spent in illegal preventive detention may be treated as custody undergone for the purposes of any sentence of imprisonment imposed thereunder."
SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. Mr. Mahfooz A. Nazki, the learned counsel appearing for the respondents, in his written submissions as stated thus:-

> "A. Interpretation of Section 3(2) of the 1986 Act i. Section 3, to the extent relevant, reads as under:
>
> 3. Power to make order detaining certain persons:- (1) The Government may, if satisfied with respect to any boot-legger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber 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 be 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 Government are satisfied that it is necessary so to do, they 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:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the 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." ii. It is evident from a plain reading of the above provision that the power to pass a detention order is ordinarily that of the State Government under Section 3(1) of the 1986 Act.

iii. However, such power may, under Section 3(2), be delegated by State Government to a District Magistrate (DM) or Commissioner of Police (Commissioner). It is here that the proviso comes in to play and provides that such a delegation in favor of a DM/Commissioner cannot be valid for more than three months at a time.

iv. It is therefore clear that the period of "three months" relates not to period of detention but to the duration for which State Government's order empowering the DM or Commissioner to issue detention orders can be valid.

v. The above view has found favour with this Hon'ble Court in various judgments including:

• Harpreet Kaur (Mrs) Harvinder Singh Bedi v. State of Maharashtra and Anr., (1992) 2 SCC 177 ("Harpreet Kaur"), @ para 31-33 • State of Maharashtra & Ors. v. Balu, (2021) 13 SCC 454, @para 6.3 to 6.6 • T. Devaki vs. Government of Tamil Nadu & Ors., (1990) 2 SCC 456, @ para 10 • Aravind Choudhary Vs. State of Telangana, Criminal Appeal No.924/2017 @ pg. 2 of the judgment vi. It may be mentioned that the judgment in T. Devaki has been passed by a Bench of three Hon'ble Judges.

vii. It is submitted that both the judgments relied on by the Petitioner (mentioned above) have not taken into account the aforesaid decisions.

The period of one year mentioned in the order is strictly in accordance with the 1986 Act.

viii. At this stage, the scheme of the 1986 Act may be noted:

• As mentioned above, a detention order is passed either by the State Government or by the Magistrate/Commissioner [as a delegate of the Government], under Section 3(1) or Section 3(2) of the Act respectively. The provision does not require any time period to be specified in the order of detention [See T. Devaki @para 10, 12 13 and 15].

[Note: In the present case, the power was delegated to the DM vide G.O. Rt. No. 1089 dated 09.06.2022 [annexed herewith as Annexure 1] and the detention order was passed on 25.08.2022 thereafter – i.e., well within the time of three months.] • Under Section 3(3), an additional safeguard is provided in case when the detention order is passed by Magistrate/Commissioner. This Section

requires that the detention order passed by the DM/Commissioner shall be confirmed within a period of 12 days by the State Government, otherwise it lapses after expiry of 12 days.

[Note: The order of confirmation, in the present case, was passed by the State Government on 01.09.2022 i.e., within the 12 days' period.] • Thereafter, under Section 10, the detention order along with all relevant material is required to be placed before the Advisory Board within a period of three weeks from the date of detention.

• In the event the Advisory Board confirms the detention order, the Government may, under Section 12 read with Section 13, direct the detention order to continue for a period not exceeding twelve months. It is only under this provision that a period for detention has been prescribed.

[Note: The order under Section 12 was passed by the Government on 18.10.2022.] ix. In the present case, the aforementioned procedure was strictly followed. The period of one year has been mentioned in the order dated 18.10.2022 passed under Section 12 read with Section 13 not in the detention order dated 25.08.2022 passed under Section 3. The submissions of the Petitioner are therefore clearly misconceived.

The detention order has been passed strictly in accordance with the afore-mentioned procedure.

B. The Detention order is not stale.

i. It has been contended by the Petitioner that there is no proximate link between his acts and the detention order. The said submission is misconceived. Before detailing the factual aspects, the following legal position may be noted:

> • If the grounds form a chain of proximate events and if the last incident is proximate to the date of detention, such a detention order cannot be set aside on the ground of being stale even if earlier incidents are not proximate to date of detention. [The Collector & District Magistrate, W.G. Dist. Eluru, Andhra Pradesh v. Sangala Kondamma, 2005 3 SCC 666 (@ para 10) ("Sangala Kondamma")] • Each case has to be analysed in light of its specific facts and circumstances by adopting a pragmatic approach and "no hard-and-fast formula is possible to be laid or has been laid in this regard". [Licil Antony v. State of Kerala and Anr., (2014) 11 SCC 326 @para 18].

• The word 'proximity' does not mean any immediate closeness but it rather means something which indicates a pattern [Bhupendra v. State of Maharashtra & Anr., (2008) 17 SCC 165, @para 10]."
DISCUSSION

10. Before we advert to the rival submissions canvassed on either side, we must look into the Preamble and few relevant provisions of the Act 1986.

The preamble to the Act 1986 reads thus:-

> "PREAMBLE An Act to provide for preventive detention of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers for preventing their dangerous activities prejudicial to the maintenance of Public Order.
>
> Whereas public order is adversely affected every now and then by the dangerous activities of certain persons, who are known as bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders and land-grabbers.
>
> And whereas having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which the dangerous activities are being clandestinely organised and carried on in violation of law by them, as bootleggers, dacoits, drug-offenders, goondas, immoral traffic offenders or land-grabbers in the State of Andhra Pradesh and particularly in its urban areas, it is necessary to have a special law in the State of Andhra Pradesh to provide for preventive detention of these six classes of persons and for matters connected therewith :"

11. The aforesaid Act 1986 came into force with effect from 28.02.1986. Section 2(a) reads thus:-

> "Section 2. — Definitions In this Act, unless the context otherwise requires,—
>
> (a) "acting in any manner prejudicial to the maintenance of public order" means when a boot-

legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a landgrabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order :

> Explanation :—For the purpose of this clause 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 or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health;" (Emphasis supplied)

12. Section 2(b) defines "boot-legger". Section 2(b) reads thus:-

> "(b) "boot-legger" means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968) and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person,

or who abets in any other manner the doing of any such thing;" (Emphasis supplied)

13. Section 3 is in respect with the power to make order detaining certain persons. Section 3 reads thus:-

> "Section 3. Power to make orders detaining certain persons:— (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug- offender, goonda, immoral traffic offender or land- grabber 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 be 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 Government are satisfied that it is necessary so to do, they 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:
>
> Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the 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 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 Government."

14. Section 12 provides for the action upon report of the Advisory Board. It reads thus:-

> "Section 12. Action upon report of Advisory Board: — (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in Section 13 as they think fit.
>
> (2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith."

15. Section 13 provides for the maximum period of detention. Section 13 reads thus:-

> "Section 13. Maximum period of detention: — The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention." (Emphasis supplied) ESSENTIAL CONCEPT OF PREVENTIVE DETENTION

16. The essential concept of the preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention order under the Act 1986. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond the reasonable doubt, whereas in the other a person is detained with a view to prevent him from doing such act(s) as may be specified in the Act authorizing preventive detention.

17. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (See : Haradhan Saha v. The State of W.B. and others, 1974 Cri.L.J.1479]

18. In Halsbury's Laws Of England, it is stated thus:-

> "The writ of habeas corpus ad subjiciendum" unlike other writs, is a prerogative writ, that is to say, it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. This writ is a writ of right and is granted ex debito justitiate. It is not, however, a writ of course. Both at common law and by statute, the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown. The writ may not in general be refused merely because an alternative remedy by which the validity of the detention can be questioned. "Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment and any person who is legally entitled to the custody of another may apply for the writ in order to regain custody. In any case, where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reason for it being made."

19. In Corpus Juris Secundum, the nature of the writ of habeas corpus is summarized thus:-

> "The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place with the day and cause of his caption and detention to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf." 'Habeas corpus' literally means "have the body". By this writ, the court can direct to have the body of the person detained to be brought before it in order to ascertain whether the detention is legal or illegal. Such is the predominant position of the writ in the Anglo- Saxon Jurisprudence."

20. In Constitutional and Administrative Law By Hood Phillips & Jackson, it is stated thus:-

> "The legality of any form of detention may be challenged at common law by an application for the writ of habeas corpus. Habeas corpus was a prerogative writ, that is, one issued by the King against his officers to compel them to exercise their functions properly. The practical importance of habeas corpus as providing a speedy judicial remedy for the determination of an applicant's claim for freedom has been asserted frequently by judies and writers. Nonetheless, the effectiveness of the remedy depends in many instances on the width of the statutory power under which a public authority may be acting and the willingness of the Courts to examine the legality of decision made in reliance on wide ranging statutory provision. It has been suggested that the need for the "blunt remedy" of habeas corpus has diminished as judicial review has developed into an ever more flexible jurisdiction. Procedural reform of the writ may be appropriate, but it is important not to lose sight of substantive differences between habeas corpus and remedies under judicial review. The latter are discretionary and the court may refuse relief on practical grounds; habeas corpus is a writ of right, granted ex debito justitiae."

21. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". 'Habeas Corpus' literally means 'have his body'.

The general purpose of these writs as their name indicates was to obtain the production of the individual before a court or a judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the Executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. In England, the jurisdiction to grant a writ existed in Common Law, but has been recognized and extended by statute. It is well established in England that the writ of habeas corpus is as of right and that the court has no discretion to refuse it. "Unlike certiorari or mandamus, a writ of habeas corpus is as of right" to every man who is unlawfully detained. In India, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of

the Constitution. Therefore, it is an extraordinary remedy available to a citizen of this Country, which he can enforce under Article 226 or under Article 32 of the Constitution of India.

22. It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. Habeas corpus is a remedy designed to facilitate the release of persons detained unlawfully, not to punish the person detaining and it is not, therefore, issued after the detention complained of has come to an end. It is a remedy against unlawful detention. It is issued in the form of an order calling upon the person who has detained another, whether in prison or in private custody, to 'have the body' of that other before the Court in order to let the Court know on what ground the latter has been confined and thus to give the Court an opportunity of dealing with him as the law may require. By the writ of habeas corpus, the Court can cause any person who is imprisoned to be brought before the Court and obtain knowledge of the reason why he is imprisoned and then either set him free then and there if there is no legal justification for the imprisonment, or see that he is brought speedily to trial. Habeas Corpus is available against any person who is suspected of detaining another unlawfully and not merely against the police or other public officers whose duties normally include arrest and detention. The Court must issue it if it is shown that the person on whose behalf it is asked for is unlawfully deprived of his liberty. The writ be addressed to any person whatever-an official or a private individual-who has another in his custody. The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that this legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India, which provides:-

> "Article 21. Protection of life and personal liberty. —No person shall be deprived of his life or personal liberty except according to procedure established by law."
> SUBMISSION NO. 1 OF THE APPELLANT

23. The learned counsel appearing for the appellant vehemently submitted that the High Court failed to appreciate that the order of detention could be termed as contrary to the proviso to Section 3(2) of the Act 1986 referred to above as the detention can only be in force for a period of three months in the first instance. According to the learned counsel, the Government thereafter may extend the period for not more than three months at a time so that there is periodic assessment and review as to whether the continuous detention of a person is necessary or not. In short, the sum and substance of the submission canvassed on behalf of the appellant detenu is that the detention order passed for 12 months at a stretch could be termed as without jurisdiction and contrary to the mandate of sub-section (2) of Section 3 of the Act 1986. In support of the said submission, the learned counsel has placed strong reliance on a decision of this Court in the case of Cherukuri Mani (supra).

24. We must first look into the decision of this Court in Cherukuri Mani (supra) as the same also dealt with sub-

section (2) of Section 3 of the Act 1986. This Court after reproducing the entire Section 3 of the Act 1986 in para 10 of the judgment interpreted and held as under:-

> "11. A reading of the above provisions makes it clear that the State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first instance, whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days. The continuance of detention beyond 12 days would depend upon the approval to be accorded by the Government in this regard. Sub-section (3) makes this aspect very clear. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months.
>
> 12. Proviso to sub-section (2) of Section 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months.

Such extension, however, cannot be for a period, exceeding three months, at a time. It means that, if the Government intends to detain an individual under the Act for the maximum period of 12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard.

13. The requirement to pass order of detention from time to time in the manner referred to above, has got its own significance. It must be remembered that restriction of initial period of detention to three months is nothing but implementation of the mandate contained in clause (4)(a) of Article 22 of the Constitution of India. It reads as under:

> "22. (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—
>
> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
>
> Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)."

14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. When the provisions of Section 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the government order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time.

15. Normally, a person who is detained under the provisions of the Act is without facing trial which in other words amounts to curtailment of his liberties and denial of civil rights. In such cases, whether continuous detention of such person is necessary or not, is to be assessed and reviewed from time to time. Taking into consideration these factors, the legislature has specifically provided the mechanism "Advisory Board" to review the detention of a person. Passing a detention order for a period of twelve months at a stretch, without proper review, is deterrent to the rights of the detenu. Hence, the impugned government order directing detention for the maximum period of twelve months straightaway cannot be sustained in law." (Emphasis supplied)

25. Thus, from the aforesaid, it is evident that in Cherukuri Mani (supra), this Court took the view that sub-

section (2) of Section 3 more particularly the proviso to sub-

section (2) is in respect with the operation of the order of detention. To put it in other words, the time period for which the detenu is to be detained.

26. In the aforesaid context, we may say with profound respect that Cherukuri Mani (supra) does not lay down the correct law. Sub-section (2) of Section 3 has nothing to do with the period of detention. In Cherukuri Mani (supra), the Bench completely mis-read the entire provision.

27. We are of the view that Section 3(2) is with respect to the delegation of powers by the State Government upon the District Magistrate or Commissioner of Police, as the case may be, for exercise of powers under sub-section (2) of Section 3 of the Act 1986. The period as mentioned in Section 3(2) of the Act 1986 refers to the period of delegation of powers and it has no relevance at all to the period for which a person may be detained. It appears that the attention of the learned Judges while deciding Cherukuri Mani (supra) was not invited to a three-Judge Bench judgment of this Court in T. Devaki v. Government of Tamil Nadu, (1990) 2 SCC 456, wherein it has been held as under:-

"8. Placing reliance on Section 3(2) Mr. Garg urged that since the impugned detention order did not specify the period for which the detenu was required to be detained, the order was rendered illegal. On an analysis of Section 3 of the Act as quoted above, we find no merit in the submission. Section 3(1) confers power on the State Government to detain a bootlegger or drug offender, or forest offender or goonda or an offender in immoral traffic or a slum grabber with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Section 3(2) empowers the State Government to delegate its power as conferred on it under sub-section (1) to District Magistrate or a Commissioner of Police, if it is satisfied that the circumstances prevailing, or likely to prevail in any area within the local limits of the jurisdiction of the District Magistrate or the Commissioner of Police, make it necessary to delegate the power to them. It further provides that the order of delegation shall be in writing and it shall also specify the period during which the District Magistrate or the Commissioner of Police, are authorised to exercise the powers of the State Government under sub-section (1) of Section 3. Proviso to sub-section (2) lays down that the delegation should not be for an unlimited period, instead it should not be for a period of more than three months. If the State Government is satisfied that it is necessary to extend the period of delegation it may amend its order, extending such period from time to time but at no time the extension shall be for a period of more than three months. Once the State Government's power under Section 3(1) is delegated to the District Magistrate or the Commissioner of Police, they are authorised to exercise that power on the grounds, specified in Section 3(1) of the Act. Neither sub-section (1) nor sub-section (2) of Section 3 of the Act require the detaining authority to specify the period of detention for which a detenu is to be kept under detention.

9. Section 3(3) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 8 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention. Under Section 11 the Advisory Board is required to consider the materials placed before it and after hearing the detenu, to submit its report to the State Government within seven weeks from the date of detention of the person concerned. In a case where the Advisory Board forms

> opinion, that there was no sufficient cause for the detention the State Government shall revoke the detention order but if in its opinion sufficient cause was made out, the State Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period as specified in Section 13 of the Act.

Section 13 provides the maximum period for which a person can be detained in pursuance of any detention order made and confirmed under the Act. According to this provision the maximum period of detention shall be twelve months from the date of detention. The State Government has, however, power to revoke detention order at any time it may think proper.

10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification." (Emphasis supplied)

28. The above referred decision of this Court in T. Devaki (supra) was later relied upon by a three Judge Bench, in the case of Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department and Another v.

Kamala and Another reported in (2018) 5 SCC 322, for the proposition that the detaining authority is not obliged to specify the period for which a detenue is required to be detained. In Secretary to Government of Tamil Nadu (supra), the High Court had set aside the detention order issued under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) on the ground that the period of detention was not specified. The High Court relied on the decision in the Commissioner of Police and Another v. Gurbux Anandram Bhiryani

reported in (1988) Supp SCC 568, which came to be overruled by a subsequent decision of a larger Bench in T. Devaki (supra). The Bench speaking through one of us, Justice Dr. D.Y. Chandrachud held that since the legislation does not require detaining authority to specify the period for which a detenu is required to be detained the order of detention would not be rendered invalid or illegal in absence of such specification.

29. The discussion as aforesaid has a different angle too.

We may elaborate the same a little further. Whether determining the period of detention in the order of detention, would render the order bad and illegal? To put it in other words, what would have been the legal implications had the detaining authority stated in the detention order that the detenu be detained for a period of one year? In this context, we must look into a Constitution Bench decision of this Court in the case of Makhan Singh v. State of Punjab reported in AIR 1952 SC 27.

30. In the said case, the petitioner therein was arrested and detained under order dated 01.03.1950 by the District Magistrate, Amritsar under Section 3(1) of the Preventive Detention Act, 1950. The petitioner therein challenged the validity of the said order on various ground but during the pendency of the said petition the petitioner was served with another detention order dated 30.07.1951 on 16.08.1951 under the amended provisions of the Preventive Detention Act. By the said order the petitioner therein was to be detained upto 31.03.1952 the date on which the said Act was to expire.

31. In Makhan Singh (supra), this Court observed:-

> "6. Whatever might be the position under the Act before its amendment in February 1951, it is clear that the Act as amended requires that every case of detention should be placed before an Advisory Board constituted under the Act (Section 9) and provides that if the Board reports that there is sufficient cause for the detention "the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit" (Section 11). It is, therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported." (Emphasis supplied)

32. It was argued by the learned Advocate General in that case that if the Advisory Board reports that there is no sufficient cause for the detention the person concerned would be released forthwith and therefore the direction that he should be detained upto 31.03.1952, could be ignored as a mere surplusage. The said argument was repelled by this Court by observing as under:-

> "We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of

> his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected."

33. Thus, had the detaining authority specified the period of detention in the order of detention, it could have been argued that the detaining authority has usurped the power of the Government and the Advisory Board as per the scheme mentioned in the provisions of the Act 1986 and that the detention order was contrary to the constitutional mandate expressed in Article 22(4) of the Constitution.

34. It also appears that the attention of the learned Judges while deciding Cherukuri Mani (supra) was not drawn to yet one another decision of this Court in the case of Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra, (1992) 2 SCC 177, wherein a Bench of two-

Judge interpreted Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981, which is pari materia to Section 3(2) of the Act 1986. We quote the relevant observations:-

> "31. 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.
>
> 32. Section 3 reads as follows:
>
> "3. 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:
>
> 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."

33. 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." (Emphasis supplied)

35. In the case of Abhay Shridhar Ambulkar v. S.V. Bhave, the Commissioner of Police, reported in AIR 1991 SC 397, this Court was dealing with a matter relating to the preventive detention under the National Security Act (65 of 1980). The principal argument before the Court was that there was no valid conferment of power on the Commissioner to make the detention order. It was also argued that the Government had issued the order without applying its mind and by simply reproducing the words of sub-section (3) of Section 3. The satisfaction of the Government for conferring the power on the Commissioner for the purpose in question was purported to have been reached on the circumstances prevailing on the date of the order or likely to prevail during the three months period in question. It was also argued that the Government was not certain which of the alternative circumstances was relevant for reaching the subjective satisfaction and it was submitted that it had acted in a mechanical manner without application of mind. In that context, the observations of this Court are worth taking note of:-

> "The power to make an order of detention primarily rests with the Central Government or the State Government. The State Government, however, being satisfied with certain circumstances may order that the District Magistrate or the Commissioner of Police may also make an order of detention in respect of matters relating to the security of the State or Public Order or maintenance of supplies and services essential to the community against any person within their respective areas. The State Government can make such an order which shall not in the first instance exceed three months but it may extend such period from time to time making fresh order for a further period against not exceeding three months at one time. It may be noted that the conferment of this power on the District Magistrate or the Commissioner of Police is not to the exclusion of but in addition to the powers of the Government to exercise its own power.
>
> 7. The first paragraph of the order dated 6th January 1990 states that Government was satisfied that having regard to the circumstances prevailing or likely to prevail in Greater Bombay Police Commissionerate it is necessary that during the period commencing on 30th January 1990 to 29th April 1990 that the Commissioner should also exercise the powers conferred under subsection (2) of Section 3 of the Act.

This is indeed no more than a reproduction of the terms of subsection (3) of Section 3. But sub-section (3) refers to two independent circumstances namely : (i) the prevailing circumstances, (ii) the circumstances that are likely to prevail. The former evidently means circumstances in praesenti that is prevalent on the date of the order and the latter means the anticipated circumstances in future. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers for the current period, it has to satisfy itself with the prevailing circumstances. If the Government wants that the District Magistrate or the Commissioner of Police should also exercise the powers during the future period, it must be satisfied with the circumstances that are likely to prevail during that period. This seems to be the mandate of sub-section (3).

8. Subjective satisfaction for the exercise of power under sub-section (3) of Section 3 must be based on circumstances prevailing at the date of the order or likely to prevail at a future date. The period during which the District Magistrate or the Commissioner of Police, as the case may be, is to exercise the power provided by subsection (2) of Section 3 is to be specified in the order which would depend on the existence of circumstances in praesenti or at a future date. If the subjective satisfaction is based on circumstances prevailing at the date of the order, the choice of period, which must not exceed three months, would have to be determined from the date of the order. If the conferment of power is, considered necessary because of circumstances likely to prevail during the future period, the duration for the exercise of power must be relatable to the apprehended circumstances. Therefore, the specification of the period during which the District Magistrate or Commissioner of Police is to exercise power under sub- section (2) of Section 3 would depend on the subjective satisfaction as to the existence of the circumstances in praesenti or future. Since very drastic powers of detention without trial are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding the period during

which such power shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail. The subjective satisfaction cannot be lightly recorded by reproducing both the alternative clauses of the statute. The subjective satisfaction on the prevailing Circumstances, or circumstances that are likely to prevail at a future date is the sine qua non for the exercise of power. The use of the word 'or' signifies either of the two situations for different periods. That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail ,in future. The latter may stem from the former. For example, there may be disturbances on the date of the order and the same situation may be visualised at a future date also in which case the power may be conferred on the subordinate officers keeping both the factors in mind; but in that case the two circumstances would have to be joined by the conjunctive word 'and' not the disjunctive word 'or'. The use of the disjunctive word 'or' in the impugned Government order only indicates nonapplication of mind and obscurity in thought. The obscurity in thought inexorably leads to obscurity in language. Apparently, the Government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used the disjunctive word "or" in the impugned order." (Emphasis supplied)

36. Thus, the decision of this Court referred to above while dealing with the conferment of powers under sub-section (3) of Section 3 of the National Security Act, makes it clear that the conferment of power has to be specific either with regard to the circumstances prevailing or likely to prevail and not for both. In that case, even the order dated 06.01.1990 of the State Government conferring the power on the Commissioner of Police recorded the satisfaction of the Government of Maharashtra that having regard to the circumstances prevailing or likely to prevail in the Greater Bombay Police Commissionerate, it was necessary that during the period commencing on January 30, 1990 and ending on April 21, 1990, the Commissioner of Police shall exercise the powers conferred by sub-section (2) of Section 3 of the Act. The same was not approved by this Court.

37. Section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'PASA'), which is pari materia to Section 3(2) of the Act 1986 with which we are concerned, fell for consideration before a two-Judge Bench of this Court in the case of Navalshankar Ishwarlal Dave v. State of Gujarat, reported in AIR 1994 SC 1496, wherein the contention raised on behalf of the detenu that the blanket power of delegation under sub-section (2) of Section 3 of the PASA could be said to be a negation of satisfaction on the part of the State Government which was likely to be abused by the District Magistrate or the Commissioner of Police. While repelling such contention, this Court observed:-

> "3. Section 3(2) of PASA empowers the State Govt. that having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate and the Commissioners of Police, by an order in writing direct that District Magistrate, the Commissioner of Police, may also, if satisfied the existence of conditions envisaged in sub-sec. (1) of S. 3 to exercise the powers of the State Govt. to detain any person. The contention of Shri Ganesh, the learned counsel for the appellants is that the blanket power of delegation is a negation of satisfaction on the part of the State Govt. and likely to be abused by the

> District Magistrate or the Commissioner of Police. The Legislature entrusted the power to the State Govt. and if need be only selectively but not blanket delegation is permissible. After the issue of the notification in 1985 no review thereafter was done. The order of delegation made by the State Govt. without application of mind was, therefore, illegal and invalid and the sequator detention made became illegal. We find no force in the contention. PASA was made in exercise of the power under entry 3 of concurrent List III of 7th Schedule and reserved for consideration of the President and received his assent. So it is a valid law. It envisages that the State Govt. under S. 3(1) would exercise the power of detention or authorise an officer under S. 3(2) to detain bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber. The PASA was made to provide for preventive detention of aforestated persons whose activities were satisfied to be prejudicial to the maintenance of public order. Sub-

section (4) of S. 3 declares that a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities, whether as a bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber, which affect adversely or are likely to affect adversely the maintenance of public order. Explanation thereto postulates that 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 by any person referred to in the sub- section (4) directly or indirectly, is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Therefore, the Act postulates satisfaction on the part of the State Govt. that the dangerous and antisocial activities of any of the aforestated persons shall be deemed to be acting prejudicial to the maintenance of public order whether the person is engaged in or is making preparation for engaging in any activities enumerated in the definition clauses and the public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if the activities directly or indirectly, causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. In the counter affidavit filed on behalf of the State in the High Court and consideration thereof the High Court held that "the situation was found prevailing in the State in the year 1985 where the impact of the activities of various persons mentioned in the preamble with reference to their respective activities has heightened from being anti-social and dangerous activities to be prejudicial to the maintenance of public order." It is, with a view, to curb those dangerous or anti-social activities, the Govt. considered it appropriate to delegate the power under sub-sec. (2) of S. 3 to the "authorised officer" and the Govt. has stated in the notification that "having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of each of the District Magistrate specified in the Schedule annexed thereto, the Govt. of Gujarat is satisfied that it is necessary so to do" and accordingly exercised the power under sub-sec. (2) of S. 3 and directed the authorised officers i.e. the District Magistrate of each District specified in the Schedule and also the three Commissioners of Police in the respective Corporations to exercise within their local limits of jurisdiction, the power conferred by sub-see. (1) of S. 3.It is seen that the dangerous or anti-social activities are legislatively recognised to be prejudicial to the maintenance of

public order. The enumerated activities hereinbefore referred to are not isolated but being indulged in from time to time adversely affecting the public order and even tempo. The District Magistrate concerned, being the highest Dist. Officer on the spot and the Commissioner of Police in the cities have statutory duty to maintain public order. Therefore, with a view to have then effectively dealt with, to move swiftly where public order is affected or apprehended and to take action expeditiously instead of laying information with the Govt. on each occasion and eagerly awaiting action at State Govt. level, the State Govt. having exercised the power under S. 3(2) conferred on the District Magistrate or the Commissioner the power to order detention under S. 3(1) when he considers or deems necessary to detain any person involved in any of the dangerous or anti-social activities enumerated herein before, prejudicially affecting or "likely to affect the maintenance of public order." The later clause lay emphasis on immediacy and promptitude and the authorised officer on the spot is the best Judge to subjectively satisfy from the facts and ground situation and take preventive measure to maintain public order. The reliance by Shri Ganesh on the decision of this Court reported in A. K. Roy v. Union of India, AIR 1982 SC 710, para 72 has no application in view of the factual background in this Act. So long as the activities of bootlegger, dangerous person, drug offender, immoral traffic offender and property grabber persist within the local limits of the jurisdiction of the concerned District Magistrate and Commissioners of Police, as the case may be, and being directly responsible to maintain public order and to deal with depraved person to prevent antisocial and dangerous activities which affects adversely or are likely to affect adversely the maintenance of public order, the necessity would exist. Therefore, the question of periodical review of delegation order does not appear to be warranted." (Emphasis supplied)

38. Thus from the aforesaid, it could be said that the principal contention canvassed on behalf of the appellant detenu is thoroughly misconceived and deserves to be negatived at the threshold.

39. At the cost of repetition, sub-section (2) of Section 3 of the Act 1986 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 the 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) exercises the powers of the State Government as conferred by sub-section (1). The proviso to sub-section (2) 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 1986 referred to above which lays down that the person may be detained in pursuance of any detention order made under the Act which has been confirmed under Section 12 of the Act 1986.

40. But this Court in Cherukuri Mani (supra), interpreted the proviso to mean that when an order of detention is made by the State Government under Section 3(1) of the Act, then the period of detention can be only for a period of three months in the first instance. A similar order made under Section 3(2) would be for an initial period of twelve days unless approved by the State Government.

According to this Court, if the State Government intends to detain an individual under the Act for the maximum period of twelve months, there must be an initial order of detention for a period of three months and at least three orders of extension for a period not exceeding three months each. In support of such an interpretation, reliance has been placed on Article 22(4)(a) of the Constitution, which is extracted as under for immediate reference:

> "22. Protection against arrest and detention in certain cases:— xx.xxxxx (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—
>
> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
>
> Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or"

41. A reading of Article 22(4)(a) would clearly indicate that no law providing for preventive detention shall authorize the detention of a person for a period beyond three months.

Thus, an order of detention cannot be for a period longer than three months unless, the Advisory Board has reported before the expiration of the said period of three months that there is, in its opinion such sufficient cause for detention.

Article 22(4)(a) clearly indicates that even if the order of detention does not prescribe any period of detention, such an order of detention cannot be in force for a period beyond three months, unless the Advisory Board before the expiration of three months opines that there is sufficient cause for detention. In other words, if the Advisory Board does not give its opinion within a period of three months from the date of detention, in such a case, the order of detention beyond the period of three months would become illegal and not otherwise. If within the period of three months, the Advisory Board opines that there was no sufficient cause for such detention then, the State Government would have to release the detenu forthwith.

42. Hence, Article 22(4)(a) in substance deals with the order of detention and has nothing to do with the delegation of the power of detention by the State Government to an Officer as stipulated under Section 3(2) of the Act. In fact, under Section 9 of the Act, the State Government has to refer the matter to the Advisory Board within three weeks from the date of detention, irrespective of whether the detention order is passed under Section 3(1) or Section 3(2) of the Act and the Advisory Board has to give its opinion within seven weeks from the date of detention. That would totally make it ten weeks. As stipulated in Article 22(4)(a) of the Constitution, if in a given case, once the Advisory Board gives its opinion within the stipulated period of three months, then in our view, Article 22(4)(a) would no longer be applicable. Thus, Article 22(4)(a) applies at the initial stage of passing of the order of detention by the State Government or by an officer who has been delegated by the

State Government and whose order has been approved by the State Government within a period of twelve days from the date of detention and not at the stage subsequent to the report of the Advisory Board.

Depending upon the opinion of the Advisory Board, under Section 12 of the Act, the State Government can revoke the order of detention and release the detenu forthwith or may confirm the detention order and continue the detention of the person concerned for any period not exceeding the maximum period of twelve months, which is stipulated in Section 13 of the Act. Therefore, when the State Government passes a confirmatory order under Section 12 of the Act after receipt of the report from the Advisory Board then, such a confirmatory order need not be restricted to a period of three months only. It can be beyond a period of three months from the date of initial order of detention, but up to a maximum period of twelve months from the date of detention.

43. We reiterate that the period of three months stipulated in Article 22(4)(a) of the Constitution is relatable to the initial period of detention up to the stage of receipt of report of the Advisory Board and does not have any bearing on the period of detention, which is continued subsequent to the confirmatory order being passed by the State Government on receipt of the report of the Advisory Board.

The continuation of the detention pursuant to the confirmatory order passed by the State Government need not also specify the period of detention; neither is it restricted to a period of three months only. If any period is specified in the confirmatory order, then the period of detention would be upto such period, if no period is specified, then it would be for a maximum period of twelve months from the date of detention. The State Government, in our view, need not review the orders of detention every three months after it has passed the confirmatory order.

44. Thus, in our view, the period of three months specified in Article 22(4)(a) of Constitution of India is relatable to the period of detention prior to the report of the Advisory Board and not to the period of detention subsequent thereto.

Further, the period of detention in terms of Article 22(4)(a) cannot be in force for a period beyond three months, if by then, the Advisory Board has not given its opinion holding that there is sufficient cause for such detention. Therefore, under Article 22(4)(a), the Advisory Board would have to give its opinion within a period of three months from the date of detention and depending upon the opinion expressed by the Advisory Board, the State Government can under Section 12 of the Act, either confirm the order of detention or continue the detention of the person concerned for a maximum period of twelve months as specified in Section 13 of the Act or release the detenu forthwith, as the case may be. If the order of detention is confirmed, then the period of detention can be extended up to the maximum period of twelve months from the date of detention. With respect, we observe that it is not necessary that before the expiration of three months, it is necessary for the State Government to review the order of detention as has been expressed by this Court in Cherukuri Mani (supra). The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the

maximum period of twelve months from the date of detention. On the other hand, when under Section 3(2) of the Act, the State Government delegates its power to the District Magistrate or a Commissioner of Police to exercise its power and pass an order of detention, the delegation in the first instance cannot exceed three months and the extension of the period of delegation cannot also be for a period exceeding three months at any one time. [See: Abdul Razak v. State of Karnataka, ILR 2017 Kar 4608 (FB)]

45. The first submission canvassed on behalf of the appellant is answered accordingly.

SECOND SUBMISSION ON BAHALF OF THE APPELLANT

46. It was also vehemently argued by the learned counsel appearing for the appellant detenu that the registration of four First Information Reports (FIRs) under the Andhra Pradesh Prohibition Act, 1995 (as amended by the Act No. 18 of 2020) (for short, 'the Act 1995'), by itself, is not sufficient to arrive at a subjective satisfaction that the activities of the appellant detenu as a boot-legger is prejudicial to the maintenance of public order.

47. We take notice of the fact that between 06.01.2021 and 09.03.2022 i.e. in a span of fourteen months a total of four cases were registered against the appellant detenu. The offence in all the four FIRs is one under Section 7B and Section 8B resply of the Act 1995 as amended by Act No. 18 of 2020. Section 7B reads thus:-

> "Section 7-B. Prohibition of Boot Legging Activities.- The manufacturing, transporting, setting, buying, importing, exporting or storing of any alcoholic liquor and supplying or transporting of any raw materials for the manufacture of alcoholic liquor illegally or clandestinely, otherwise than in accordance with the provisions of the A .P. Excise Act, 1968 is hereby prohibited."

48. Section 8B reads thus:-

> "Section 8-B. Penalty for sale, export, import and transport of alcoholic liquor manufactured illegally and clandestinely.- Whoever in contravention of section 7-B of this Act indulges in sale, export, import or transport of illicitly distilled alcoholic liquor shall on conviction be liable for imprisonment for a term which shall not be less than one year but which may extend upto eight years and with fine which shall not be less than rupees two lakhs for the first offence and which shall not be less than rupees five lakhs for the second offence."

49. The charge as enumerated below gives a clear picture:-

S.No.	FIR	Qty.
1	06.01.21 : FIR No. 01/21 (Cr. No. 13/21)	5 Ltrs.
2	13.08.21 : FIR No. 08/21 (Cr. No. 376/21)	30 Ltrs.

3	30.09.21 : FIR No. 10/21 (Cr. No.532/21)	10 Ltrs.
4	09.03.22 : FIR No. 03/22 (Cr. No. 213/22)	10 Ltrs.
	TOTAL	55 Ltrs.

50. In connection with all the four FIRs the appellant detenu was arrested and released on bail.

51. The detaining authority took notice of the following reports of the chemical analyzer:-

> i. Ground No. 1 : The analysis report; C.E. No. 366/21 in Sl. No. 5890 dtd. 04.03.21 found the seized ID liquor in Cr. No. 13/21 unfit for human consumption & injurious to health.
>
> ii. Ground No. 2: The analysis report; C.E. No. 2381/21 in Sl. No. 41632 dtd. 10.11.21 found the seized ID liquor in Cr. No. 376/21 unfit for human consumption & injurious to health.
>
> iii. Ground No. 3: The analysis report; C.E. No. 2796/21 in Sl. No. 45126 dtd. 27.11.21 found the seized ID liquor in Cr. No. 532/21 unfit for human consumption & injurious to health.
>
> iv. Ground No. 4: The analysis report; C.E. No. 851/22 in Sl. No. 13027 dtd. 04.04.22 found the seized ID liquor in Cr. No. 213/22 unfit for human consumption & injurious to health.
>
> (Emphasis supplied)

52. Thus, the samples which were drawn and collected from the liquor seized from the possession of the appellant detenu were sent to the forensic science laboratory for the purpose of chemical analysis and in all the four cases referred to above, the analysis report states that the samples were found to be unfit for human consumption and injurious to health.

“LAW AND ORDER” AND “PUBLIC ORDER”

53. This Court on several occasions examined the concepts of “law and order” and “public Order”. Immediately after the Constitution came into force, a Constitution Bench of this Court in the case of Brij Bhushan and Another v.

The State of Delhi, (1950) SCR 605, dealt with a case pertaining to public order. The Court observed that “public order” may well be paraphrased in the context as “public tranquility”.

54. Another celebrated Constitution Bench judgment of this Court is in the case of Romesh Thappar v. The State of Madras, (1950) SCR 594. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called Cross Roads printed and published in Bombay was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in this Court by filing a writ petition under Article 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquility and to create disturbance of public order and tranquility. This Court observed:-

> “... ‘Public order’ is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established .... it must be taken that ‘public safety’ is used as a part of the wider concept of public order .....”

55. The distinction between “public order” and “law and order” has been carefully defined in a Constitution Bench judgment of this Court in the case of Dr. Ram Manohar Lohia v. State of Bihar and Others, (1966) 1 SCR 709. In this judgment, Hidayatullah, J. by giving various illustrations clearly defined the "public order" and "law and order". Relevant portion of the judgment reads thus:-

> “....Does the expression “public order” take in every kind of disorder or only some? The answer to this serves to distinguish “public order” from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. 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. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.
>
> It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". 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...."

56. In the case of Arun Ghosh v. State of West Bengal, (1970) 1 SCC 98, Hidayatullah, J. again had an occasion to deal with the question of "public order" and "law and order".

In this judgment, by giving various illustrations, very serious effort has been made to explain the basic distinction between "public order" and "law and order". The relevant portion reads as under:-

> "...Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the

reach of the act upon the society..."

57. The concept of 'public order' and 'law and order' has been dealt with in the case of Pushkar Mukherjee & Others v. The State of West Bengal, AIR 1970 SC 852. In this case, this Court had relied on the important work of Dr. Allen on 'Legal Duties' and spelled out the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. Dr. Allen has distinguished `public' and `private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

58. This Court in the case of Babul Mitra alias Anil Mitra v. State of West Bengal & Others, (1973) 1 SCC 393, had an occasion to deal with the question of "public order" and "law and order". This Court observed that the true distinction between the areas of "law and order" and "public Order" is one of degree and extent of the reach of the act in question upon society. The Court pointed out that the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.

59. In Dipak Bose alias Naripada v. State of West Bengal,(1973) 4 SCC 43, a three-Judge Bench of this Court explained the distinction between "law and order" and "public order" by giving illustrations. Relevant portion reads as under:

> "..Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed. There is nothing in the two incidents set out in the grounds in the present case to suggest that either of them was of that kind and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them from offering resistance. But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them."

60. In Kuso Sah v. The State of Bihar & Others, (1974) 1 SCC 185, this Court had also considered the issue of "public order". The Court observed thus:-

"These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder...."

61. This Court in yet another important case of Ashok Kumar v. Delhi Administration & Others, (1982) 2 SCC 403, clearly spelled out a distinction between "law and order" and "public order". In this case, the Court observed as under:-

"13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or 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 detrimental 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...."

62. It has to be seen whether the detenu's activity had any impact on the local community, or to put it in the words of Hidayatullah, J., had the act of the detenu disturbed the even tempo of the life of the community of that specified locality?

63. In Commissioner of Police & Others, v. C. Anita (Smt.), (2004) 7 SCC 467, this Court again examined the issue of "public order" and "law and order" and observed thus:-

"7. ....The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the 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 life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order".

The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

64. Thus, from the various decisions referred to above, it is evident that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.

65. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

66. It is relevant to note that the Explanation to Section 2(a) of the Act 1986 referred to above in para 11 incorporates a legal fiction as to the adverse effect on public order. In the case of Harpreet Kaur (supra), the connotation of the Explanation was elucidated as under:-

"28. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect 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 widespread 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." (Emphasis supplied)

67. It may be apposite to look into the decision of this Court in the case Rashidmiya @ Chhava Ahmedmiya Shaik (supra).

It was a case under the provisions of the PASA. Section 2(b) of the PASA which defines a "bootlegger" is pari materia to Section 2(b) of the Act 1986 Act. Section 3(4) of the PASA reads as under:-

"Section 3: .....

(4) For the purpose of this section, a person shall be deemed to be "acting in any manner prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities whether as a bootlegger or common gambling house paper or and person or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order."

68. In the context of the aforesaid provisions, this Court observed as under:-

"16. ... A conjoint reading of Section 2(b) and Section 3(4) with the explanation annexed thereto clearly spells out that in order to clamp an order of detention upon a 'boot- legger' under Section 3 of the Act, the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2(b) but also that the activities of the said bootlegger affect adversely or likely to affect adversely the maintenance of public order. Reverting to the facts of this case, the vague allegations in the grounds of detention that the detenu is the main member of the gang of Abdul Latif Abdul Wahab Shaikh indulging in bootlegging activities and that the detenu is taking active part in such dangerous activities, are not sufficient for holding that his activities affected adversely or were likely to affect adversely the maintenance of public order in compliance with sub- section 4 of Section 3 of the Act that the activities of the detenu have caused harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life, property or public health as per the explanation to Section 3(4).

17. The offences registered in the above mentioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order." From the aforesaid observations, it becomes evident that this Court, in the facts of the said

case, found that the mere fact that the petitioner therein was dealing in liquor had no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

69. The learned counsel appearing for the appellant has also placed strong reliance on the decision of this Court in Piyush Kantilal Mehta (supra). In that case, the allegations in the grounds of detention were that the detenu was a prohibition boot-legger; that he was indulging in the sale of foreign liquor and that he and his associates indulged in use of force and violence. In that case, the detenu was alleged to have been caught red-handed possessing bottles of English wine with foreign marks and on the second occasion, he was caught while transporting 296 bottles of foreign liquor in an Ambassador car.

While dealing with that case, this Court observed as follows:-

"It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order." (Emphasis supplied)

70. The pronouncement in the case of Piyush Kantilal Mehta (supra) would be of no assistance in a case where the detaining authority, based on cogent material (i.e. multiple cases of dealing with liquor unsafe for human consumption), forms the opinion that the activity of boot-legger was prejudicial to the maintenance of public order.

71. In the case on hand, the detaining authority has specifically stated in the grounds of detention that selling liquor by the appellant detenu and the consumption by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu appellant is prejudicial to the maintenance of public order. Not only that, the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu appellant from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record. It is also well settled that whether the material was sufficient or not is not for the Courts to decide by applying the objective basis as it is matter of subjective satisfaction of the detaining authority.

72. In view of the aforesaid discussion, we find no error, much less an error of law, in the impugned judgement of the High Court.

73. In the result, this appeal fails and is hereby dismissed.

.....CJI.

(DR. DHANANJAYA Y. CHANDRACHUD) .....J. (J.B. PARDIWALA) .....J. (MANOJ MISRA) NEW DELHI;

AUGUST 16, 2023