Ameena Begum vs The State Of Telangana on 4 September, 2023

Author: Dipankar Datta

Bench: Dipankar Datta, Surya Kant

REPORTABLE

2023INSC788

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO…… OF 2023

[ARISING OUT OF SLP (CRIMINAL) NO. 8510 OF 2023]

AMEENA BEGUM …APPELLANT

VS.

THE STATE OF TELANGANA & ORS. …RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

Leave granted.

THE JUDGMENT UNDER CHALLENGE

2. Under assail in this appeal is a judgment and order dated 28th June, 2023 of a Division Bench of the High Court for the State of Telangana ("High Court", hereafter). Vide the impugned judgment, a writ petition1 instituted by the appellant seeking a writ of habeas corpus was dismissed and the order of detention dated 24th March, 2023 Date: 2023.09.04 15:15:48 IST Reason:

> ("Detention Order", hereafter) of the appellant's husband ("Detenu", hereafter), impugned therein, upheld.

THE ORDER OF DETENTION AND FURTHER PROCEEDINGS

3. The Commissioner of Police, Hyderabad City ("Commissioner", hereafter) passed the Detention Order against the Detenu under the provisions of section 3(2) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act 1986 ("the Act", hereafter). Perusal of the Detention Order reveals that the Detenu earlier suffered an order of detention dated 4th March, 2021 under the category of "White Collar Offender"; however, pursuant to an order of the High Court dated 16th August, 2021 in writ proceedings instituted by his father2, the Detenu was released from detention on 17th August, 2021; that even after such release, the Detenu did not mend his habitual nature of committing crimes and in the recent past (during 2022 and 2023), in quick succession, had committed 9 (nine) more offences within the limits of Hyderabad Police Commissionerate, as listed therein; that out of such 9 (nine) offences, 5 (five) FIRs3 had been taken into consideration; and that on examination of the material placed before him, the Commissioner was satisfied that the Detenu was "habitually committing the offences including outraging the modesty of women, cheating, extortion, obstructing the public servants from discharging their legitimate duties, robbery and criminal intimidation along with his associates in an organized manner in the limits of ... and he is a 'Goonda' as defined in clause (g) of Section 2" of the Act (bold in original). The Commissioner, with a view to prevent the Detenu from acting in a manner prejudicial to maintenance of public order, recorded not only his satisfaction for invoking the provisions of the Act but also recorded a satisfaction that "the ordinary law under which he was booked is not sufficient to deal with the illegal activities of such an offender who has no regard for the society. Hence, unless he is detained under the detention laws, his unlawful activities cannot be curbed". After referring to the bail petitions filed by the Detenu in Cr.No.18/2023 of Golconda PS and Cr.No.35/2023 of Falaknuma PS and bail having been granted despite suitable counters filed by the prosecution resulting in the Detenu's release from jail, the Commissioner observed as follows:

> "As seen from his past criminal history, background and antecedents and also his habitual nature of committing crimes one
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> (i) FIR No. 227/2022 dated 28.07.2022 for offences under Sections 186, 189, 353, 504, 506, IPC; (ii) FIR No. 262/2022 dated 10.10.2022 for offences under Sections 420, 384, 506 r/w 34, IPC; (iii) FIR No. 338/2022 dated 12.10.2022 for offences under Sections 354, 420, 323, 506 r/w 34, IPC; (iv) FIR No. 18/2023 dated 21.01.2023 for offences under Sections 506, 420, 406 r/w 34, IPC; and (v) FIR No. 35/2023 dated 08.02.2023 for offences under Sections 392, 195A, IPC.

after the other and his efforts to come out of the prison, I strongly believe that if such a habitual criminal is set free, his activities would not be safe to the society and there is an imminent possibility of his committing similar offences by violating the bail conditions in one of the cases which would be detrimental to public order, unless he is preventively detained from doing so by an appropriate order of detention." This was followed by the order detaining the Detenu, treated as a 'Goonda', from the date of service of the same with a direction to lodge him in Central Prison, Chanchalguda,

Hyderabad.

4. Upon her husband being detained, the appellant submitted a representation dated 29th March, 2023 in terms of section 10 of the Act raising several grounds and seeking revocation of the Detention Order. Such representation was placed before the Advisory Board constituted under section 9 of the Act. The Advisory Board vide a report dated 29th April, 2023 opined that "there is sufficient cause for the detention of the detenu ...", whereupon the Government issued an order dated 20th May, 2023 under sub-section (1) of section 12 read with section 13 of the Act confirming the Detention Order and directing that the detention be continued for a period of 12 months from the date of detention, i.e., 27th January, 2023 (sic, 27th March, 2023). By a further order of even date, the appellant was informed by the Government of absence of any valid grounds/reasons to set aside/revoke the Detention Order leading to rejection of her representation.

5. The appellant then invoked the writ jurisdiction of the High Court whereupon the parties were heard and the impugned judgment delivered containing reasons for dismissing the writ petition. CONTENTIONS OF THE PARTIES

6. In course of hearing of the appeal, Mr. Luthra, learned senior counsel for the appellant invited our attention to several paragraphs of the impugned judgment to demonstrate the errors from which the same suffered, both factual as well as legal. He also placed on record written notes containing submissions on factual as well as legal aspects. Relying on the authorities referred to therein, he prayed for interference by this Court to facilitate release of the Detenu from illegal detention.

7. Per contra, Mr. Dave, learned senior counsel for the respondents urged that notwithstanding Mr. Luthra's attempt to prick holes in the impugned judgment of the High Court, what is to be seen and read is the order of detention passed under section 3 and once read, it becomes clear that the ultimate conclusion recorded in the impugned judgment is defensible based on the grounds for detention as assigned by the Commissioner in his order dated 24th March, 2023 and the order dated 20th May, 2023 of the Government. Other contentions raised by Mr. Dave need not be enumerated here, for, we intend to deal with the same while proceeding further. However, to put it concisely, the argument of Mr. Dave has been that the satisfaction of the detaining authority cannot be subjected to objective tests and that the courts are not supposed to exercise appellate powers over such authorities; and that an order, proper on its face, passed by a competent authority in good faith is a complete answer to negative a claim such as the one raised by Mr. Luthra. Several authoritative decisions on preventive detention cases having high precedential value was cited by him and he contended that the appeal deserves nothing but dismissal. GENERAL DISCUSSIONS ON PREVENTIVE DETENTION AND JUDICIAL REVIEWABILITY

8. Prior to venturing to decide the contentious issue as to whether the Detention Order is legal or not, we consider it necessary to remind ourselves of the purpose for which preventive detention in a particular case could be ordered, the requisites of a valid detention order and the scope of judicial reviewability of such order.

9. Clauses (1) and (2) of Article 22 of the Constitution guaranteeing protection to a person against arbitrary arrest, effected otherwise than under a warrant issued by a court of law, are regarded as vital and fundamental for safeguarding personal liberty. Nonetheless, the protection so guaranteed is subject to clause (3) of Article 22 which operates as an exception to clauses (1) and (2) and ordains that nothing therein shall apply to, inter alia, any person who is arrested or detained under any law providing for preventive detention. The purpose of preventive detention, as said by Hon'ble A.N. Ray, CJ. in Haradhan Saha vs. State of West Bengal4 is to prevent the greater evil of elements imperiling the security and safety of a State, and the welfare of the Nation. Preventive detention, though a draconian and AIR 1974 SC 2154 dreaded measure, is permitted by the Constitution itself but subject to the safeguards that are part of the relevant article and those carved out by the Constitutional Courts through judicial decisions of high authority which have stood the test of time.

10. It is common knowledge that recourse to preventive detention can be taken by the executive merely on suspicion and as a precaution to prevent activities by the person, sought to be detained, prejudicial to certain specified objects traceable in a validly enacted law. Since an order of preventive detention has the effect of invading one's personal liberty merely on suspicion and is not viewed as punitive, and the facts on which the subjective satisfaction of the detaining authority is based for ordering preventive detention is not justiciable, meaning thereby that it is not open to the Constitutional Courts to enquire whether the detaining authority has erroneously or correctly reached a satisfaction on every question of fact and/or has passed an order of detention which is not justified on facts, resulting in narrowing down of the jurisdiction to grant relief, it is only just and proper that such drastic power is not only invoked in appropriate cases but is also exercised responsibly, rationally and reasonably. Having regard to the circumstance of loss of liberty by reason of an order of preventive detention being enforced without the detenu being extended any opportunity to place his case, the Constitutional Courts being the protectors of Fundamental Rights have, however, never hesitated to interdict orders of detention suffering from any of the vices on the existence whereof such limited jurisdiction of judicial reviewability is available to be exercised.

11. At this stage, a survey of certain authorities outlining the contours of judicial reviewability of an order of preventive detention may not be inapt.

12. Reading of paragraph 2 of the judgment authored by Hon'ble H.J. Kania, CJ., reveals that A.K. Gopalan vs. State of Madras5 was the first case where the different articles on Fundamental Rights came up for discussion before the Supreme Court. Detention was ordered under the Preventive Detention Act, 1950 ("the Detention Act", hereafter). The petitioner therein challenged the vires of the enactment as well as the detention order. The decision of the Supreme Court by its full complement of 6 (six) Hon'ble Judges rendered within 4 (four) months of India becoming a Republic, revealed an approach of circumscribing Article 21 by a literal interpretation. Since then, this Court in Rustomjee Cawasjee Cooper vs. Union of India6 has held that "the assumption in A.K. Gopalan case that certain articles in the Constitution exclusively deal with specific matters and in determining whether there is infringement of the individual's guaranteed rights, the object and the form of the State action alone need be considered, and effect of the laws on fundamental rights of the individuals in general will be ignored cannot be accepted as correct", and it being settled law AIR 1950 SC 27 AIR 1970 SC 564 that the new needs of a person for liberty in the different spheres of life

can now be claimed as a part of personal liberty under Article 21 and these personal liberties cannot be restricted either by legislation or law not satisfying Articles 14 and 19, we need not at all be guided by the view expressed in A.K. Gopalan (supra). Suffice it to observe that A.K. Gopalan (supra) was decided by this Court at the dawn of the Constitution, keeping in mind the then social realities, when the true and correct interpretation of the Constitution was yet to take shape and also without the benefit of any precedent on the point, which permits understanding of various points of view of Hon'ble Judges and thereby makes it easy for successors to evolve the dynamic facets of the Fundamental Rights enshrined in the Constitution.

13. This Court in Shibban Lal Saksena vs. State of Uttar Pradesh7 speaking through Hon'ble B.K. Mukherjea, J. (as the Chief Justice then was) quashed an order of preventive detention under the Detention Act reasoning that if one of the two grounds for ordering detention was illegal, the order of detention could not survive on the other ground. Law was laid down in the following words:

> "8. The first contention raised by the learned counsel raises, however, a somewhat important point which requires careful consideration. It has been repeatedly held by this Court that the power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision AIR 1954 SC 179 cannot be challenged in a court of law, except on the ground of malafides. A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenue under Section 7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself in its communication dated 13-3- 1953, has plainly admitted that one of the grounds upon which the original order of detention was passed is unsubstantial or non- existent and cannot be made a ground of detention. The question is, whether in such circumstances the original order made under Section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole. ***"

14. In Rameshwar Shaw vs. District Magistrate8, a Constitution Bench speaking through Hon'ble P.B. Gajendragadkar, J. (as the Chief Justice then was) in course of interdicting an order of

detention passed under section 3 of the Detention Act held as follows:

> "7. There is also no doubt that if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of clauses (i) to (iii) of Section 3(1)(a) and in that sense are foreign to the Act, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed. Similarly, if some of the grounds supplied to the detenu are so vague that they would virtually deprive the detenu of his statutory right of making a representation that again may introduce a serious infirmity in the order of his detention. If, however, the grounds on which the order of detention proceeds are relevant and germane to the matters which fall to be considered under Section 3(1)(a), AIR 1964 SC 334 it would not be open to the detenu to challenge the order of detention by arguing that the satisfaction of the detaining authority is not reasonably based on any of the said grounds.
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> 8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)(a) is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention on the ground of mala fides and in support of the said plea urge that along with other facts which show mala fides the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. It is only in this incidental manner and in support of the plea of mala fides that this question can become justiciable; otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)(a) cannot be questioned before the Courts."

15. In his Counter Affidavit (at pgs. 10 and 11) to the special leave petition, the Commissioner referred to, and extracted a passage from paragraph 8 of the decision of this Court in Khudiram Das vs. The State of West Bengal9, wherein a Bench of 4 (four) Hon'ble Judges of this Court was examining a challenge to an order of detention passed under section 3 of the Maintenance of Internal Security Act, 1971 ("MISA", hereafter) by a district magistrate. We consider it appropriate to notice not only paragraph 8 of the decision rendered by Hon'ble P.N. Bhagwati, J. (as His Lordship then was) in its entirety but also paragraph 9, reading as follows:

> "8. Now it is clear on a plain reading of the language of sub- sections (1) and (2) of Section 3 that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner, as set out in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of Section 3 are 'if satisfied' and they clearly import subjective satisfaction (1975) 2 SCC 81 on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the

> conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Sastri, C.J. pointed out in State of Madras v. V.G. Row [(1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 SCR 597] that preventive detention is 'largely precautionary and based on suspicion' and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in Rex v. Halliday [1917 AC 260] namely, that 'the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based'.

This being the nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i),

(ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. This would clearly show that the power of detention is not a quasi-judicial power.

9. But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the

condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. Emperor v. Shibnath Bannerji [AIR 1943 FC 75 : 1944 FCR 1 : 45 Cri LJ 341] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of 'improper purpose', that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in Commissioner of Police v. Gordhandas Bhanji [1951 SCC 1088 : AIR 1952 SC 16 : 1952 SCR 135] and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour and National Service [(1946) 2 All ER 201] the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded 'on materials which are of rationally probative value'. Machindar v. King [AIR 1950 FC 129 : 51 Cri LJ 1480 : 1949 FCR 827]. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Pratap Singh v. State of Punjab [AIR 1964 SC 72 : (1964) 4 SCR 733]. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider." (underlining ours, for emphasis)

16. In Icchu Devi Choraria vs. Union of India10, the judicial commitment to strike down illegal detention, even when the petition on which Rule was issued did not have the requisite pleadings, was highlighted in the following words:

> "5. *** Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do any thing more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of

showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not (1980) 4 SCC 531 hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade." (underlining ours, for emphasis)

17. In a different context, we may take note of the decision in Sama Aruna vs. State of Telangana11 where, S.A. Bobde, J. (as the Chief Justice then was) while construing the provisions of the Act, held:

"16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account." In holding that the order of detention therein was grounded on stale grounds, the Court held that:

"The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of 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." (underlining ours, for emphasis) (2018) 12 SCC 150

18. This was further affirmed by this Court in Khaja Bilal Ahmed vs. State of Telangana12, where the detention order dated 2nd November, 2018 issued under the Act had delved into the history of cases

involving the appellant-detenu from the years 2007 - 2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, Hon'ble Dr. D.Y. Chandrachud, J. (as the Chief Justice then was) observed:

> "23. *** If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the Appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future." (bold in original) (underlining ours, for emphasis) (2020) 13 SCC 632

19. We may also refer to the decision of a Constitution Bench of this Court in Sunil Fulchand Shah vs. Union of India13 wherein the need to strictly adhere to the timelines, provided as procedural safeguards, was stressed upon. It was held thus:

> "11. *** The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The justification for preventive detention being necessity a person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words 'may be detained' shall have to be interpreted."

20. On a conspectus of the decisions referred to above and other decisions on preventive detention, we may observe here that the argument commonly advanced on behalf of detaining authorities in the early days of the Constitution was that the Court's enquiry ought to be confined to whether there

is an order of detention or not and the moment such an order, good on its face, is produced, all enquiry into good faith, sufficiency of the reasons or the legality or illegality of the action comes to an end. However, with passage of time, and expansion and development of law, it is no longer the law that a preventive detention action, howsoever lawful it might appear on its face, cannot be invalidated by the Constitutional Courts. This is so, as at present, there is no administrative order affecting rights of the subjects that can (2000) 3 SCC 409 legitimately claim to be impregnably guarded by a protective shield, which judicial scrutiny cannot penetrate.

21. Apart from the aforesaid decisions, multiple decisions have been rendered by this Court over the years which provide suitable guidance to us to complete the present exercise; however, we wish to conclude this discussion by referring to one decision of this Court delivered little in excess of a decade back by a Bench of 3-Judges.

22. In Rekha vs. State of Tamil Nadu14, this Court observed that:

> "21. It is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. What difference is it to the detenu whether his imprisonment is called preventive or punitive?
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> (italics in original) ***
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> 29. Preventive detention is, by nature, repugnant to democratic ideas and an anathema to the Rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous and historic struggles. It follows, therefore, that if the ordinary law of the land (the Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal."

23. There could be little doubt with the thought process that although the executive would pass an order under the preventive detention laws as (2011) 5 SCC 244 a preventive or a precautionary measure, its effect viewed strictly from the stand point of the detenu is simply and plainly punitive. Significantly, an order of detention is not relatable to an alleged commission of offence which a court is seized of and, thus, the conduct of the accused complained of is yet to be found blameworthy; on the contrary, since it relates to an anticipated offence based on past conduct, the detenu could well feel that he is at the receiving end of a subjective satisfaction of the executive despite he not being proved to be on the wrong side of the law on any previous occasion. If someone loses his liberty and lands up in prison not having a semblance of a chance to resist or protest, the very circumstance of being put behind bars for such period as specified in the order of detention based on an anticipation that an offence is likely to be committed by him seems to be an aspect which does not sync with the norms and ethos of our very own Constitution and the decisions of this

Court in which the concept of 'LIFE' has been explained in such a manner that 'LIFE' has been infused in the letters of Article 21 (see Common Cause vs. Union of India15). Nonetheless, so long clause (3) of Article 22 of the Constitution itself authorises detention as a preventive measure, there can be no two opinions that none can take exception to such a measure being adopted and it is only a limited judicial review by the Constitutional Courts that can be urged by an aggrieved detenu wherefor too, in examining challenges to orders of preventive detention, the Courts would be loath to interfere with or substitute their (1999) 6 SCC 667 own reasoning for the subjective satisfaction arrived at by the detaining authority. Since the object of a preventive detention law is not punitive but preventive and precautionary, ordinarily it is best left to the discretion of the detaining authority.

24. We, however, hasten to observe here that though the decision in Rekha (supra) reflects on an important aspect of loss of liberty without trial by taking recourse to preventive detention laws, the decision of the Constitution Bench in Haradhan Saha (supra) still holds the field and to the extent the learned Judges in Rekha (supra) sound a note discordant with the law laid down in Haradhan Saha (supra) ought not to be construed as acceptance by us as the correct exposition of law.

25. Be that as it may, culling out the principles of law flowing from all the relevant decisions in the field, our understanding of the law for deciding the legality of an order of preventive detention is that even without appropriate pleadings to assail such an order, if circumstances appear therefrom raising a doubt of the detaining authority misconceiving his own powers, the Court ought not to shut its eyes; even not venturing to make any attempt to investigate the sufficiency of the materials, an enquiry can be made by the Court into the authority's notions of his power. Without being remotely concerned about the sufficiency or otherwise of the materials on which detention has been ordered, the Court would be justified to draw a conclusion, on proof from the order itself, that the detaining authority failed to realize the extent of his own powers. This is quite apart from questioning the action for want of sufficient materials that were before the detaining authority. The authority for the detention is the order of detention itself, which the detenu or the Court can read. Such a reading of the order would disclose the manner in which the activity of the detenu was viewed by the detaining authority to be prejudicial to maintenance of public order and what exactly he intended should not be permitted to happen. Any order of a detaining authority evincing that the same runs beyond his powers, as are actually conferred, would not amount to a valid order made under the governing preventive detention law and be vulnerable on a challenge being laid. In the circumstances of a given case, a Constitutional Court when called upon to test the legality of orders of preventive detention would be entitled to examine whether

(i) the order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

(ii) in reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(iii) power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

(iv) the detaining authority has acted independently or under the dictation of another body;

(v) the detaining authority, by reason of self-created rules of policy or in any other manner not authorized by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(vi) the satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate;

(vii) the satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(viii) the ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(ix) the grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(x) the timelines, as provided under the law, have been strictly adhered to.

Should the Court find the exercise of power to be bad and/or to be vitiated applying any of the tests noted above, rendering the detention order vulnerable, detention which undoubtedly visits the person detained with drastic consequences would call for being interdicted for righting the wrong.

ANALYSIS AND DECISION

26. Since in the present case power under section 3 of the Act was exercised, it is reproduced hereunder for facility of reference:

> "3. (1) The Government may, if satisfied with respect to any boot- legger, dacoit, drug-offender, goonda, immoral traffic offender, Land-Grabber, Spurious Seed Offender, Insecticide Offender, Fertilizer Offender, Food Adulteration Offender, Fake Document Offender, Scheduled Commodities Offender, Forest Offender, Gaming Offender, Sexual Offender, Explosive Substances Offender, Arms Offender, Cyber Crime Offender and White Collar or Financial Offender, 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 mean time, it has been approved by the Government." The word used in sub-sections (1) and (2) of section 3 is "satisfied" and it clearly imports subjective satisfaction on the part of the detaining authority before an order of detention can be made.

27. We now proceed to examine the Detention Order passed by the Commissioner on 24th March, 2023 under section 3(2) of the Act and whether such 'subjective satisfaction' of the Commissioner stands scrutiny on application of the requisite tests.

28. In the present case, the Detention Order was based on 5 (five) distinct offences, of which there is a crime allegedly committed by the Detenu in relation to a minor girl. Crimes have also been registered on allegations of cheating, and obstructing a public official from discharging his duty, as well as a crime has been registered involving dacoity. In Crime Nos. 262/2022, 18/2023 and 35/2023, charge-sheets are yet to be filed and the Detenu has been released on bail whereas in regard to Crime Nos. 338/2022 and 227/2022, charge-sheets have been filed without even arresting him.

29. The issues with the Detention Order which we need to address are these: first, whether the alleged acts of commission for which the Detenu has been kept under detention are prejudicial to 'public order' and secondly, whether all relevant circumstances were considered or whether extraneous factors weighed in the mind of the detaining authority leading to the conclusion that the Detenu is a habitual offender and for prevention of further crimes by him, he ought to be detained. Incidentally, the issue of whether application of mind is manifest in first ordering detention and then confirming it by continuing such order for a period of 12 (twelve) months upon rejection of the representation filed on behalf of the Detenu by the appellant could also be answered. Needless to observe, we need not examine the second and the incidental issues if the appeal succeeds on the first issue.

30. Addressing the first issue first, it has to be understood as a fundamental imperative as to how this Court has distinguished between disturbances relatable to "law and order" and disturbances caused to "public order".

31. It is trite that breach of law in all cases does not lead to public disorder.

In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order".

32. We may refer to the decision of the Constitution Bench of this Court in Ram Manohar Lohia vs. State of Bihar16, where the difference between "law and order" and "public order" was lucidly expressed by Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words:

> "54. *** 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.
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> 55. 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." (underlining ours, for emphasis) (1966) 1 SCR 709

33. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, CJ. in Arun Ghosh vs. State of West Bengal17, is this: "Does it [read:

> the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?" In that case, the petitioning

> detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order". In the process of quashing the impugned order, the Chief Justice while referring to the decision in Ram Manohar Lohia (supra) also ruled:
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> "3. *** Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance (1970) 1 SCC 98 amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community.

... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

34. In Kuso Sah vs. The State of Bihar18, Hon'ble Y.V. Chandrachud, J.

(as the Chief Justice then was) speaking for the Bench held that:

> "4. *** 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. ***
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> 6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***" (underlining ours, for emphasis)

35. Turning our attention to section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes 'public order'. Even within the provisions of the Act, the term "public order" has, stricto sensu, been defined in narrow and restricted terms. An order of detention under section 3(1) of the Act can only be issued against a detenu to prevent him "from acting in any manner prejudicial to the maintenance of public order". "Public order" is defined in the (1974) 1 SCC 195 Explanation to section 2(a) of the Act as encompassing situations

that cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health".

36. Ram Manohar Lohia (supra) is an authority to rely upon for the proposition that if liberty of an individual can be invaded under statutory rules by the simple process of making of a certain order, he can be so deprived only if the order is in consonance with the said rule. Strict compliance with the letter of the rule, in such a case, has to be the essence of the matter since the statute has the potentiality to interfere with the personal liberty of an individual and a Court is precluded from going behind its face. Though circumstances may make it necessary for ordering a detention without trial, but it would be perfectly legitimate to require strict observance of the rules in such cases. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.

37. Rekha too (supra) provides a useful guide. It is said in paragraph 30 that:

> "30. Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal."

38. At this stage, it would be useful to consider certain events anterior to the Detention Order but referred to therein. The earlier order of detention dated 4th March, 2021 was challenged by the Detenu's father before the High Court. Such order of detention was passed considering 4 (four) FIRs under sections 420 and 406 of the IPC, wherein the Detenu was arraigned as an accused. In its reasoned judgment dated 16th August, 2021, the High Court noted this Court having opined in a catena of decisions that there is a vast difference between "law and order" and "public order"; when offences are committed against a particular individual it falls within the ambit of "law and order" whereas when the public at large is adversely affected by the criminal activities of a person, then such conduct of the person is said to disturb "public order". Holding that the true distinction between the areas of 'law and order' and 'public order' lies not merely in the nature or quality of the act, but in the proper degree and extent of its impact on the society, it was ruled that the cases do not fall within the ambit of the words "public order" or "disturbance of public order", instead, they fall within the scope of the words "law and order", and that there was no need for the detaining authority to pass the impugned order. Based thereon, the impugned order was quashed and the Detenu set at liberty.

39. In fine, what we find is that the order of detention impugned in that writ petition failed to differentiate between offences which create a "law and order" situation and which prejudicially affect or tend to prejudicially affect "public order". The present Detention Order fares no better. Even if the offences referred to in the Detention Order, alleged to have been committed by the

Detenu have led to the satisfaction being formed, still the same are separate and stray acts affecting private individuals and the repetition of similar such acts would not tend to affect the even flow of public life. The offence in respect of the minor girl did exercise our consideration for some time but we have noted that the Detenu was not arrested because of an order passed by the High Court on an application under section 438 of the Criminal Procedure Code ("Cr. PC", hereafter). The investigating agency not having elected to have such order quashed by a higher forum, the facts have their own tale to tell. Even otherwise, the gravity of the offences alleged in Arun Ghosh (supra) was higher in degree, yet, the same were not considered as affecting 'public order'. The only other offence that could attract the enumerated category of "acting in any manner prejudicial to the maintenance of public order" and an order of preventive detention, if at all, is the stray incident where the Detenu has been charged under section 353, IPC and where the police has not even contemplated an arrest under section 41 of the Cr. PC.

40. On an overall consideration of the circumstances, it does appear to us that the existing legal framework for maintaining law and order is sufficient to address like offences under consideration, which the Commissioner anticipates could be repeated by the Detenu if not detained. We are also constrained to observe that preventive detention laws—an exceptional measure reserved for tackling emergent situations—ought not to have been invoked in this case as a tool for enforcement of "law and order". This, for the reason that, the Commissioner despite being aware of the earlier judgment and order of the High Court dated 16th August, 2021 passed the Detention Order ostensibly to maintain "public order" without once more appreciating the difference between maintenance of "law and order" and maintenance of "public order". The order of detention is, thus, indefensible.

41. We could have ended our judgment here, but having regard to the arguments advanced at the Bar we wish to deal with the other issues too. This, we are persuaded to do, in order to remind the authorities in the state of Telangana that the drastic provisions of the Act are not to be invoked at the drop of a hat.

42. Now, we proceed with the second issue as to whether there was proper application of mind to all relevant circumstances or whether consideration of extraneous factors has vitiated the Detention Order.

43. Considering past criminal history, which is proximate, by itself would not render an order illegal. The Commissioner in the Detention Order made pointed reference to the Detenu being a habitual offender by listing 10 (ten) criminal proceedings in which the Detenu was involved during the years 2019-20, consequent to which the Detenu was preventively detained under the Act vide order of detention dated 4th March, 2021, since quashed by the High Court by its order dated 16th August, 2021. It is then stated therein that the Detenu had committed 9 (nine) offences in the years 2022-23, and these offences are again listed out in detail. However, the Commissioner states that the present order of detention is based only on 5 (five) out of these 9 (nine) crimes, which are alleged to show that the Detenu's activities are "prejudicial to the maintenance of public order, apart from disturbing peace and tranquillity in the area."

44. Interestingly, even in paragraph 9 E of his Counter Affidavit, the Commissioner has extracted a portion of the Detention Order which we have set out in paragraph 3 (supra). The reiteration of considering past criminal history of the Detenu is not without its effect, as we shall presently discuss.

45. In Khudiram Das (supra), while examining the 'history sheet' of the detenu, this Court had, in express terms, clarified that a generalisation could not be made that the detenu was in the habit of committing those offences. Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the metrics of 'public order', as discussed above. Therefore, cases where such habituality has created any 'public disorder' could qualify as a ground to order detention.

46. Although the Commissioner sought to project that he ordered detention based on the said 5 (five) FIRs, indication of the past offences allegedly committed by the Detenu in the Detention Order having influenced his thought process is clear. With the quashing of the order of detention dated 4th March, 2021 by the High Court and such direction having attained finality, it defies logic why the Commissioner embarked on an elaborate narration of past offences, which are not relevant to the grounds of the present order of detention. This is exactly what this Court in Khaja Bilal Ahmed (supra) deprecated. Also, as noted above, this Court in Shibban Lal Saksena (supra) held that such an order would be a bad order, the reason being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to his subjective satisfaction forming the basis of the order.

47. It would not be out of place to examine, at this juncture, whether the Commissioner as the detaining authority formed the requisite satisfaction in the manner required by law, i.e., by drawing inference of a likelihood of the Detenu indulging in prejudicial activities on objective data. Here, we would bear in mind the caution sounded by this Court in Rajesh Gulati vs. Govt. of NCT of Delhi19 that a detaining authority should be free from emotions, beliefs or prejudices while ordering detention as well as take note of the judgment and order (2002) 7 SCC 129 dated 16th August, 2021 of the High Court on the previous writ petition, instituted by the Detenu's father. On such writ petition, the High Court held as follows:

> "Under these circumstances, the apprehension of the detaining authority that since the detenus were granted bail in all the crimes, there is imminent possibility of the detenus committing similar offences which are detrimental to public order unless they are prevented from doing so by an appropriate order of detention, is highly misplaced. [...] In the instant cases, since the detenus are released on bail, in the event if it is found that the detenus are involved in further crimes, the prosecution can apprise the same to the Court concerned and seek cancellation of bail. Moreover, the criminal law was already set into motion against the detenus. Since the detenus have allegedly committed offences punishable under the Indian Penal Code, the said crimes can be effectively dealt with under the provisions of the Indian Penal Code. The detaining authority cannot be permitted to subvert, supplant or substitute the

punitive law of land, by ready resort to preventive detention."

48. Since the aforesaid order of the High Court went unchallenged and is, thus, binding upon the parties, it was not open to the Commissioner to refer to the very same antecedent offences again in the Detention Order under challenge. There was no direct nexus or link with the immediate need to order detention and we hold extraneous considerations having found their way into the Detention Order.

49. The other aspect requiring some guidance for detaining authorities and on which we wish to comment is that there is no requirement in law of orders of detention being expressed in language that would normally be considered elegant or artistic. An order of detention, which is capable of comprehension, has to precisely set forth the grounds of detention without any vagueness. The substance of the order and how it is understood by the detenu determines its nature. An order in plain and simple language providing clarity of how the subjective satisfaction was formed is what a detenu would look for, since the detenu has a right to represent against the order of detention and claim that such order should not have been made at all. If the detenu fails to comprehend the grounds of detention, the very purpose of affording him the opportunity to make a representation could be defeated. At the same time, the detaining authority ought to ensure that the order does not manifest consideration of extraneous factors. The detaining authority must be cautious and circumspect that no extra or additional word or sentence finds place in the order of detention, which evinces the human factor - his mindset of either acting with personal predilection by invoking the stringent preventive detention laws to avoid or oust judicial scrutiny, given the restrictions of judicial review in such cases, or as an authority charged with the notion of overreaching the courts, chagrined and frustrated by orders granting bail to the detenu despite stiff opposition raised by the State and thereby failing in the attempt to keep the detenu behind bars.

50. What we have expressed above is best exemplified by the observations of the Commissioner in the Detention Order under challenge, which are considered appropriate to be quoted. Therein, the Commissioner inter alia stated as follows:

> "The proposed detenu and his associate are notorious offenders and rowdy sheeters. ... The proposed detenu was surrendered before the Hon'ble Court in Cr.No.35/2023 of Falaknuma PS and the Hon'ble Magistrate remanded him to judicial custody, he moved bail petitions in Cr.Nos. 18/2023 of Golconda PS and 35/2023 of Falaknuma PS. The prosecution has filed suitable counters strongly opposing the grant of bail to him, but the Hon'ble Magistrate granted bail to him in both the cases and ordered for his release. Subsequently, he was released from judicial remand on bail.
>
> As seen from his past criminal history, background and antecedents and also his habitual nature of committing crimes one after the other and his efforts to come out of the prison, I strongly believe that if such a habitual criminal is set free, his activities would not be safe to the society and there is an imminent possibility of his committing similar offences by violating the bail conditions in one of the cases, which would be detrimental to public order, unless he is preventively detained from doing

> so by an appropriate order of detention." With respect to the stage of proceedings in the offences which form its basis, the Detention Order states that despite being contested by the State, bail has been granted to the Detenu in Crimes No. 4 and 5. Insofar as grant of bail to the Detenu is concerned, the Commissioner states that:
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> "I strongly believe that if such a habitual criminal is set free his activities would not be safe to the society and there is an imminent possibility of his committing similar offences by violating the bail conditions in one of the cases, which would be detrimental to public order, unless he is preventively detained from doing so by an appropriate order of detention."

51. We are of the opinion that the aforesaid excerpts from the Detention Order lay bare the Commissioner's attempt to transgress his jurisdiction and to pass an order of detention, which cannot be construed as an order validly made under the Act. The quoted observations are reflective of the intention to detain the Detenu at any cost without resorting to due procedure. It is neither the case of the respondents that the Detenu had not complied with the terms of the notice issued under section 41-A of the Cr. PC, nor has it been alleged that the conditions of bail had been violated by the Detenu. It is pertinent to note that in the three criminal proceedings where the Detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.

52. In Vijay Narain Singh vs. State of Bihar20, Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed:

> 32. ...It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court." (underlining ours, for emphasis) (1984) 3 SCC 14

53. Resonance of these principles are traceable in Banka Sneha Sheela vs. The State of Telangana21. There, while examining an order of detention passed with reference to 5 (five) offences involving sections 420, 406 and 506 of the IPC, in respect whereof the detenu had obtained orders of

bail/anticipatory bail, this Court had the occasion to say that:

> "A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case." (underlining ours, for emphasis)

54. On the ground of consideration of extraneous materials too, the Detention Order is unsustainable.

55. A pernicious trend prevalent in the state of Telangana has not escaped our attention. While the Nation celebrates Azadi Ka Amrit Mahotsav to commemorate 75 years of independence from foreign rule, some police officers of the said state who are enjoined with the duty to prevent crimes and are equally responsible for protecting the rights of citizens as well, seem to be oblivious of the Fundamental Rights guaranteed by the Constitution and are curbing the liberty and freedom of the people. The (2021) 9 SCC 415 sooner this trend is put to an end, the better. Even this Court, in Mallada K Sri Ram vs. State of Telangana22, while deciding an appeal arising from the state of Telangana, had the occasion to observe:

> "17. It is also relevant to note, that in the last five years, this Court has quashed over five detention orders under the Telangana Act of 1986 for inter alia incorrectly applying the standard for maintenance of public order and relying on stale materials while passing the orders of detention. At least ten detention orders under the Telangana Act of 1986 have been set aside by the High Court of Telangana in the last one year itself. These numbers evince a callous exercise of the exceptional power of preventive detention by the detaining authorities and the respondent-state. We direct the respondents to take stock of challenges to detention orders pending before the Advisory Board, High Court and Supreme Court and evaluate the fairness of the detention order against lawful standards.
>
> (underlining ours, for emphasis)

56. Interference by this Court with orders of detention, routinely issued under the Act, seems to continue unabated. Even after Mallada K Sri Ram (supra), in another decision of fairly recent origin in the case of Shaik Nazneen vs. The State of Telangana23, this Court set aside the impugned order of detention dated 28th October, 2021 holding that seeking shelter under preventive detention law was not the proper remedy.

57. It requires no serious debate that preventive detention, conceived as an extraordinary measure by the framers of our Constitution, has been rendered ordinary with its reckless invocation over the years as if it were available for use even in the ordinary course of proceedings. To unchain 2022 SCC OnLine SC 424 Crl. Appeal No.908 of 2022, dated 22nd June 2023 the shackles of preventive detention, it is important that the safeguards enshrined in our Constitution, particularly under the 'golden triangle' formed by Articles 14, 19 and 21, are diligently enforced.

58. Now, we proceed to answer the incidental issue raised before us. Seldom have we found orders of detention continued, after the advice of the Advisory Board, for less than the maximum period permissible under the relevant law. Consideration of the matter by the Advisory Board, which consists of respectable members including retired High Court judges and those qualified to become High Court judges, was conceived to act as a safety valve against abuse of power by the detaining authority and/or to check the possibility of grave injustice being caused to a detenu. It is one thing to say that the Advisory Board has expressed an opinion that there is sufficient cause for the detention and, therefore, the detention has been continued; yet, it is quite another thing to say that the detention should continue for the maximum permissible period. In the light of sub-section (2) of section 11 read with sub-section (1) of section 12 of the Act, the period for which the detention should continue is left to be specified by the Government with the stipulation in section 13 thereof that the maximum period shall be 12 (twelve) months from the date of detention. This appears on a plain reading of the relevant statutory provisions. That apart, Mr. Luthra is right in placing reliance on the concurring judgment authored by Hon'ble B.K. Mukherjea, J. in Dattatraya Moreshwar Pangarkar vs. State of Bombay24 that the AIR 1952 SC 181 duration for which a detenu is to be kept in detention is for the detaining authority to decide and not the Advisory Board. The said opinion finds approval in the decision of the Constitution Bench of this Court in A.K. Roy vs. Union of India25. The period of detention and the terminal point has, therefore, to be decided by the Government. Having observed the uncanny consistency of authorities continuing detention orders under the preventive detention laws for the maximum permissible span of 12 (twelve) months from the date of detention as a routine procedure, without the barest of application of mind, we think that it is time to say a few words with a view to dissuade continuation of detention orders till the maximum permissible duration unless some indication is provided therefor by the concerned Government in the confirmation order.

59. Article 22(4) of the Constitution provides that a preventive detention law cannot authorise the detention of a person for a period longer than 3 (three) months unless an Advisory Board has reported before the expiration of the said period of 3 (three) months that there is, in its opinion, sufficient cause for such detention. It is followed by a non- obstante clause which reads thus:

> "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)"

60. What section 13 of the Act, with which we are concerned, provides has been noticed in one of the preceding paragraphs. However, the regular practice of the authorities treating the maximum period of detention of (1982) 1 SCC 271 12 (twelve) months as the standard duration, in our view, could be

suggestive of a mechanical approach. Inherent in the conferment of power to extend detention for 12 (twelve) months is the discretion to make an order to be operative for any period lesser than the maximum period.

61. Fagu Shaw vs. The State of West Bengal26 is another Constitution Bench decision of this Court where challenge was laid to section 13 of the MISA. It was argued that section 13 is bad because it is violative of the Fundamental Right under Article 14 of the Constitution for the reason that it has conferred unlimited discretion on the detaining authority to fix the period of detention. Repelling the challenge, this Court held:

> "28. *** The maximum period of detention has been fixed by Section 13 and the discretion to fix the duration within the maximum has been given to the Government after considering all the relevant circumstances. Seeing that the maximum period of detention has been fixed by Section 13 and that the discretion to fix the period of detention in a particular case has to be exercised after taking into account a number of imponderable circumstances, we do not think that there is any substance in the argument that the power of Government to determine the period of detention is discriminatory or arbitrary."

62. In A.K. Roy (supra), the Court echoed the above view by holding that:

> "77. Dr Ghatate's objection against Section 13 is that it provides for a uniform period of detention of 12 months in all cases, regardless of the nature and seriousness of the grounds on the basis of which the order of detention is passed. There is no substance in this grievance because, any law of preventive detention has to provide for the maximum period of detention, just as any punitive law like the Penal Code has to provide for the maximum sentence which can be imposed for any offence. We should have thought that it would have been wrong to fix a (1974) 4 SCC 152 minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention." (underlining ours, for emphasis)

63. Whenever an accused is tried for an offence under a penal law which carries a maximum sentence, the Court is obliged while imposing sentence to apply its mind to the specific facts and circumstances of the case and to either impose maximum sentence or a lesser sentence. It has, therefore, a discretion regarding imposition of sentence. We are inclined to the view that there could be no warrant for the proposition that when it boils down to confirming an order of detention under a preventive detention law, which is not punitive, the Government can seek immunity and enjoy an unfettered, unguided and unlimited discretion in continuing detention for the maximum period without even very briefly indicating its mind as to the "imponderables" that were taken into account for fixing the maximum period. The very term "maximum period" in section 13 vests the

Government with discretion, allowing it to be exercised while considering whether the detention is to be continued for the maximum period of 12 (twelve) months or any lesser period. In our opinion, the relevant provisions of the Act have to be so read as to inhere a safeguard against arbitrary exercise of discretionary power.

64. Discretion, it has been held by this Court in Bangalore Medical Trust vs. B.S. Muddappa27, is an effective tool in administration providing an option to the authority concerned to adopt one or the other alternative. When a statute provides guidance, or rule or regulation is framed, for exercise of discretion, then the action should be in accordance with it. Where, however, statutes are silent and only power is conferred to act in one or the other manner, the authority cannot act whimsically or arbitrarily; it should be guided by reasonableness and fairness. A legislature does not intend abuse of the law or its unfair use.

65. While considering the validity of an externment order under the Maharashtra Police Act, 1951, this Court in Deepak vs. State of Maharashtra28 held:

> "When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record."

66. True it is, Deepak (supra) was not a case arising out of preventive detention laws. However, in situations where discretion is available with authorities to decide the period of detention, as articulated by Lord Halsbury in Susannah Sharp vs. Wakefield & Ors.29, this discretion should be exercised in accordance with "the rules of reason and justice, (1991) 4 SCC 54 2022 SCC OnLine SC 99 [1891] A.C. 173, 179 not according to private opinion; according to law, and not humour; it is to be, not arbitrary, vague, and fanciful, but legal and regular".

67. We turn to A.K. Roy (supra) once again where the law is expounded in the following words:

> "70. *** We have the authority of the decisions in ... for saying that the fundamental rights conferred by the different articles of Part III of the Constitution are not mutually exclusive and that therefore, a law of preventive detention which falls within Article 22 must also meet the requirements of Articles 14, 19 and 21.
>
> ***"

68. Having held thus, we are not unmindful of the decision in Vijay Kumar vs. Union of India30 where this Court rejected the contention that the Government had not applied its mind while confirming the detention of the appellant for the maximum period of 1 (one) year from the date of detention as prescribed in section 10 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Dealing with the contention that some reason should have been given why the maximum period of detention was imposed and while holding it to be without merit,

the main judgment of the presiding judge of the Bench reasoned that section 10 does not provide that any reason has to be given in imposing the maximum period of detention and that in confirming the order of detention it may be reasonably presumed that the Government has applied its mind to all relevant facts; thus, if the maximum period of detention has been imposed, it cannot be said that the Government did not apply its mind to the period of detention. It (1988) 2 SCC 57 was also held that in any event section 11 enables revocation and/or modification of the order by the Government at any time and in the circumstances, the appellant was in the least prejudiced. The concurring judgment also took the same view that the authority is not required to give any special reason either for fixing a shorter period or for fixing the maximum period prescribed under section 10.

69. Much water has flown under the bridge since then. It is no longer the law that an administrative authority is under an obligation to give a reasoned decision only if the statute under which it is acting requires it to assign reasons. On the contrary, it is only in cases where the requirement has been dispensed with expressly or by necessary implication that an administrative authority is relieved of the obligation to record reasons. Further, the presumption of official acts having been validly performed cannot be pressed into service for upholding the period for which the detention would continue if the order of detention itself suffers from an illegality rendering it unsustainable. That apart, the reasoning of no prejudice being suffered by the detenu because a power of revocation/modification is available to the Government would not be of any consolation if such power were not exercised at all. In such a case, the prejudice would be writ large. The decision in Vijay Kumar (supra) is, therefore, distinguishable.

70. Viewed reasonably, the period of detention ought to necessarily vary depending upon the facts and circumstances of each case and cannot be uniform in all cases. The objective sought to be fulfilled in each case, whether is sub-served by continuing detention for the maximum period, ought to bear some reflection in the order of detention; or else, the Government could be accused of unreasonableness and unfairness. Detention being a restriction on the invaluable right to personal liberty of an individual and if the same were to be continued for the maximum period, it would be eminently just and desirable that such restriction on personal liberty, in the least, reflects an approach that meets the test of Article 14. We, however, refrain from pronouncing here that an order of detention, otherwise held legal and valid, could be invalidated only on the ground of absence of any indication therein as to why the detention has been continued for the maximum period. That situation does not arise here and is left for a decision in an appropriate case.

71. Both Mr. Luthra and Mr. Dave have referred us the recent decision of a 3-Judges Bench of this Court in the case of Pesala Nookaraju vs. The Government of Andhra Pradesh31, where an order of detention passed in exercise of power conferred by the Andhra Pradesh Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (“1986 Act”, hereafter) was upheld despite the detenu having obtained orders of bail upon arrest in connection with investigation of 4 (four) F.I.R.s under sections 7B and 8B of the Andhra Pradesh Prohibition Act, 1995.

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72. Mr. Luthra intended to rely on the decision in Cherukari Mani vs. Chief Secretary, Government of Andhra Pradesh32. According to the appellant, the detention could only be in force for a period of three months in the first instance and that such order on a periodic assessment was required to be reviewed for continuous detention till the maximum period permissible. The contention was accepted by this Court.

73. While hearing of the appeal was in progress, came the decision in Pesala Nookaraju (supra) overruling Cherukari Mani (supra). It was held that the "State Government need not review the orders of detention every three months after it has passed the confirmatory order". Fairly, Mr. Luthra did not seek to rely on Cherukari Mani (supra) further.

74. However, according to Mr. Dave, the decision in Pesala Nookaraju (supra) answered the issue under consideration. Reference was made to a sentence in paragraph 44 where this Court held that:

> "44. *** 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. ***"

75. Mr. Luthra rightly pointed out that the excerpted sentence is part of the discussion made by this Court while dealing with the first contention of (2015) 13 SCC 722 the appellant that the detention order was contrary to the proviso to section 3(2) of the 1986 Act.

76. Mr. Dave next relied on the reasons assigned in Pesala Nookaraju (supra) to contend that the impugned Detention Order should be held legal and unexceptionable.

77. On the merits of the matter, we find the Court in Pesala Nookaraju (supra) to have found the impugned order of detention to be perfectly valid. This is borne out by paragraphs 65 and 71, which we quote hereunder:

> "65. *** 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 of 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on the 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.

***

> 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. ***"

78. It is indeed true that the appellant had raised a contention before the Court that the Government of Andhra Pradesh had directed detention of the appellant for the maximum period of 12 (twelve) months without any application of mind or providing reasons as to why this is necessary.

79. Having read the decision in Pesala Nookaraju (supra), it seems to us that the Court may not have considered it necessary to deal with the contention having formed a firm opinion on the materials on record that the appellant was indulging in activities of selling liquor to consumers which is harmful for health and, thus, prejudicial to maintenance of public order. It is on such basis that satisfaction of the detaining authority for ordering detention commended acceptance of the Court.

80. On the contrary, we have come to the conclusion on facts that the activities attributed to the appellant's husband as such cannot be branded as prejudicial to maintenance of public order. The decision in Pesala Nookaraju (supra), therefore, is distinguishable and does not assist Mr. Dave. We have, thus, no hesitation to reject the contentions of Mr. Dave.

CONCLUSION

81. In view of the foregoing discussion, we cannot uphold the Detention Order. As a consequence, the impugned judgment and order of the High Court too cannot be upheld. The Detention Order and the impugned judgment and order stand quashed. The appeal stands allowed, without costs.

82. The appellant's husband, i.e. the Detenu, shall be released from detention forthwith.

.....J (SURYA KANT) .....J (DIPANKAR DATTA) NEW DELHI;

4th SEPTEMBER, 2023.