Supreme Court of India
Vijay Narain Singh vs State Of Bihar & Ors on 12 April, 1984
Equivalent citations: 1984 AIR 1334, 1984 SCR (3) 435
Author: O C Reddy
Bench: Reddy, O. Chinnappa (J)

PETITIONER:
VIJAY NARAIN SINGH

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT12/04/1984

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1984 AIR 1334 1984 SCR (3) 435
1984 SCC (3) 14 1984 SCALE (1)736
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RF 1986 SC2177 (44)
R 1988 SC1256 (12)
R 1989 SC 364 (8,9,11)
RF 1989 SC2265 (17)
F 1990 SC2069 (5)
RF 1991 SC1640 (11,12)

ACT:
Bihar Control of Crimes Act 1981-Section 12 read with section 2 (d). For preventive detention under section 12 authorities must be satisfied that the person to be detained is anti-social element as defined in section 1(d).

Bihar Control of Crimes Act, 1981-Section 2 (d)-Definition of 'antisocial element'-Interpretation of expression 'habitually' in sub-clause (i), (ii) and (iv)-Meaning of.

Interpretation of statutes-Rule of-Law of preventive detention must be strictly construed.

Practice-When person enlarged on bail by competent criminal court, great caution should be exercised in scrutinising validity of preventive detention order which is based on the very same charge which is to be tried by criminal court.

Words and Phrases-Expression `habitually'-Meaning of.

HEADNOTE:

The petitioner, who was facing a Sessions trial for offences under section 302 read with sections 120B, 386 and 511 of the Indian Penal Code, was allowed to be enlarged on bail by the High Court. But before the petitioner was released, the District Magistrate passed an order on August 16, 1983 under section 12 (2) of the Bihar Control of Crimes Act 1981 for detention of the petitioner, in order to prevent him from acting in any manner prejudicial to the maintenance of public order. The grounds of detention supplied to the petitioner related to the incidents which took place in 1975 and 1982 and also the incident which gave rise to the above-mentioned trial. The petitioner challenged the order of detention before the High Court under Article 226 of the Constitution. The High Court dismissed the petition on a technical ground. Hence this petition under Article 32 of the Constitution. The petitioner contended: (1) that the impugned order of detention was void under Article 22 (5) of the Constitution as one of the grounds was too remote and not proximate in point of time and had therefore no rational connection for the subjective satisfaction of the District Magistrate under section 12 (2) of the Act, and (2) that the impugned order of detention was male fide and consti-

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tuted a flagrant abuse of power on the part of the District Magistrate as it was meant to subvert judicial process by trying to circumvent the order passed by the High Court enlarging the petitioner on bail.

Allowing the petition by majority,

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HELD: (Per Venkataramiah and Chinnappa Reddy, JJ.)

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. [459C-D]

Section 12 of the Bihar Control of Crimes Act, 1981 makes provision for the detention of an anti-social element.

The detaining authority should, therefore, be satisfied that the person against whom an order is made under section 12 of the Act is an anti-social element as defined in section 2 (d) of the Act. The two sub-clauses of section 2 (d) which are relevant for the purposes of this case are sub-clause (i) and sub-clause (iv). Under sub-clause (i) a person who either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offences affecting the human body or Chapter XVII dealing with offences against property, of the Indian Penal Code is considered to be an antisocial element. Under sub-clause (iv) a person who has been habitually passing indecent remarks to, or teasing women or girls, is an anti-social element. In both these sub-clauses, the word 'habitually' is used. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said subclauses or an aggregate of similar acts or omissions. Whereas under sub-clause (iii) or sub-clause (v) of section 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-clause (i), sub-clause (ii) or sub-clause (iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause (i), sub-clause (ii) or in sub-clause (iv) by the person concerned to treat him as an anti-social element'. This appears to be clear from the use of the word 'habitually' separately in sub-clause (i), sub-clause (ii) and sub-clause (iv) of section 2 (d) and not in sub-clauses (iii) and (v) of section 2 (d). If the acts or omissions in question are not of the same kind or even if they are of the same kind when
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they are committed with a long interval of time between them they cannot be treated as habitual ones. [457B-458C]

In the present case the District Magistrate has relied on three incidents to hold that the petitioner is an anti-social element. They are-(o) that on April 15, 1975 the petitioner alongwith his associates had gone to the shop of a cloth dealer of Bhagalpur Town armed with an unlicensed pistol and had forcibly demanded subscription at the point of gun and (ii) that on June 17/18, 1982 the petitioner was found teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining

authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner Moreover, the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (i) of section 2 (d) of the Act, the second one falls under sub-clause (iv) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The third ground which is based on the pending Sessions case is no doubt of the nature of acts or omissions referred to in sub-clause (i) of section 2 (d). but the interval between the first ground which falls under this sub-clause and this one is nearly eight years and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-clause (i) of section 2 (d). Therefore, it is not possible to hold that the petitioner can be called an 'anti-social element' as defined by section 2 (d) of the Act. The order of detention impugned in this case therefore, could not have been passed under section 12 (2) of the Act which authorises the detention of anti-social elements only. [458D-459D]

(Per Chinnappa Reddy J. concurring)

I do not agree with the view of my brother Sen J. that 'those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires.' It is too perilous a proposition. Our Constitution does not give a carta blanche to any organ of the State to be the sole arbiter in such matters. Preventive detention is considered so raeacherous and such an anathema to civilized thought and democratic polity that safeguards against dndue exercise of the power to detain without trial, have been built into the Constitution itself and incorporated as Fundamental Rights. There are two sentinels, one at either end. The Legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are required to examine, when demanded; whether there has been any excessive detention, that is, whether the limits set by the Constitution and the legislature have been transgressed. Preventive detention is not beyond judicial scrutiny. While adequacy or sufficiency may not be a ground of challenge, relevancy and proximity are

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tertainly grounds of challenge. Nor is it for the court to put itself in the position of the detaining authority and to satisfy itself that the untested facts reveal a path of crime. [440E-441B]

I am of the view that the decision in Kamalkar Prasad Chaturvedi's case and the host of earlier cases are not distinguishable. This Court has always taken the view that remoteness in point of time makes a ground of detention

irrelevant. [441D]

Shibban Lal Saksena v. State of Uttar Pradesh & Ors., [1954] SCR 418 and Kamlakar Prasad Chaturvedi v. State of Madhya Pradesh & Anr., [1983]4 SCC 433 referred to

(Per Sen J. dissenting)

On the facts set out in the grounds of detention the petitioner answers the description of an anti-social element as defined in s. 2 (d) of the Act. [444F]

The word 'habitually' connotes some degree of frequency and continuity. 'Habitually' requires a continuance and permanence of some tendency, something that was developed into a propensity, that is, present from day-to-day. A person is a habitual criminal who by force of habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to the society in general. In simple language the word 'habitually' means 'by force of habit'. [444G-445E]

Stroud's Judicial Dictionary' 4th end., vol. 2, p. 1204 and Shorter Oxford English Dictionary, vol. 1. p. 910, referred to.

It is not necessary that because of the word 'habitually' in sub-cl. (i), sub-cl. (ii) or sub-cl. (iv), there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl. (ii) or in sub-cl. (iv) by the person concerned before he can be treated to be an anti-social element and detained by the District Magistrate under s. 12 (2) of the Act. It is not required that the nature or character of the anti-social acts should be the same or similar. There may be commission or attempt to commit or abetment of diverse nature of facts constituting offences under Chapter XVI or Chapter XVII of the Indian Penal Code. What has to be 'repetitive' are the anti-social acts. [447B-C]

The operation of s. 12 (2) of the Act cannot be confined against habitual criminals who have a certain number of prior convictions for offences of the 'character' specified. The definition of 'anti-social element' in s. 2 (d) of the Act nowhere requires that there should be a number of prior convictions of a person in respect of offences of a particular type.

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It is not correct to say that merely because there was an acquittal of a person, the detaining authority cannot take the act complained of leading to his trial into consideration. It may be that the trial of a dangerous person may end in an acquittal for paucity of evidence due to unwillingness of witnesses to come forward and depose against him out of fright. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences under Chapter XVI dealing with offences affecting

human body or Chapter XVI dealing with offences against property of the Indian Penal Code, there is no reason why he should not be considered to be an 'antisocial element'. [446G-H]

Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Sufficiency of the grounds is not for the court but for the detaining authority for the formation of his subjective satisfaction that the detention of a person is necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The sufficiency of the grounds upon which the subjective satisfaction of the detaining authority is based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision, cannot be challenged in the court accept on the ground of mala fides. It is not for the court to examine whether the grounds upon which the detention order is based are good or bad nor can it attempt to assess in what manner and to what extent each of the 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 based. [447D-449E]

Keshov Talpade v. The King-Emperor, [1943] FCR 88, referred to

Shibban Lal Saksena v. State of Uttar Pradesh & Ors., [1954] SCR 318 and Kamlakar Prasad Chaturvedi v. State of Madhya Pradesh & Anr., [1983] 4 SCC 443, distinguished

The past conduct or the antecedent history of a person can properly be taken into account in making order of detention. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order. [451B]

Merely because there is pending prosecution and the accused is in jail, that is no impediment for his detention, if the detaining authority is satisfied that his being enlarged on bail would be prejudicial to the maintenance of public order. [451D]

Fitrat Raza Khan v. State of U.P. & Ors., [1982] 2 SCC 449, Alijan Mian v. District Magistrate, Dhanbad & Ors., [1983] 3 SCC 301 and Raisuddin Babu Tamchi v. State of U. P.

JUDGMENT:

(Per Sen & Chinnappa Reddy, JJ.) It has always been the view of this Court that the detention of individuals without trial for any length of time, however short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law. [441C] & ORIGINAL JURISDICTION Writ Petition (Criminal) No. 47 of 1984.

(Under article 32 of the Constitution of India) R.K.Garg and U.S. Parsad for the Appellant. S.N. Jha for the Respondent.

The following Judgements were delivered CHINNAPPA REDDY, J. I entirely agree with my brother Venkataramiah, J. both on the question of interpretation of the provisions of the Bihar Control of Crimes Act, 1981 and on the question of the effect of the order of grant of bail in the criminal proceeding arising out of the incident constituting one of the grounds of detention. It is really unnecessary for me to add anything to what has been said by Venkataramish, J., but my brother Sen, J. has taken a different view and out of respect to him, 1 propose to add a few lines. I am unable to agree with my brother Sen, J. On several of the view expressed by him in his dissent. In particular, I do not agree with the view that `those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires.' It is too perilous a proposition. Our Constitution does not give a carta blanche to any organ of the State to be the sole arbiter in such matters. Preventive detention is considered so treacherous and such an anathema to civilized thought and democratic polity that safeguards against undue exercise of the power to detain without trial, have been built into the Constitution itself and incorporated as Fundamental Rights. There are two sentinels, one at either end. The legislature is required to make the law circumscribing the limits within which persons may be preventively detained and providing for the safeguards prescribed by the Constitution and the courts are required to examine, when demanded, whether there has been any excessive detention, that is, whether the limits set by the Constitution and the legislature have been transgressed. Preventive detention is not be-

yond judicial scrutiny. while adequacy or sufficiency may not be a ground of challenge, relevancy and proximity are certainly grounds of challenge. Nor is it for the court to put itself in the position of the detaining authority and to satisfy itself that the untested facts reveal a path of crime. I agree with my brother Sen, J. when he says, "It has always been the view of this Court that the detention of individuals without trials for any length of time, however, short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law"

I am of the view that the decision in Kamlakar Prasad Chaturvedi's case and the host of earlier cases are not distinguishable. This Court has always taken the view that remoteness in point of time makes a ground of detention irrelevant. In Fitrat Raza Khanis case, the two incidents were not separated by any great length of time. On the other hand, they were bound by a strong bond of inflammable communal violence.

I agree with all that has been said by my brother Venkataramiah, J. and concur with him and direct the detenu to be set at liberty forthwith.

SEN, J. I have had the benefit of reading the opinion prepared by my learned brother Venkataramiah, J. and it is my misfortune that I cannot subscribe to the views expressed by my learned brethren. I would like to give my reasons for the dissent.

Although the petitioner claims to be a student leader and has taken his degree in Master of Arts in Sociology in the year 1982 and at present is a student of Law in the Bhagalpur Law College, and asserts that at one time, in the year 1980-81, he was elected as the President of the Post- Graduate Department of the Bhagalpur University and also selected as a Senator, the facts emerging from the grounds of detention clearly show that he has taken recourse to a life of crime. The petitioner applies for a writ of habeas corpus for quashing an order of detention dated August 16,1983 passed by the District Magistrate, Bhagalpur on being satisfied that his detention was necessary with a view to preventing him 'from acting in any manner prejudicial to the maintenance of public order'. The facts have been set out in the majority opinion and all that is necessary is to mention the horrendous incident which is the direct and proximate cause of the impugned order of detention.

It appears that there was a gruesome murder of two young sons of Kashinath Bajoria, owner of Bajoria petrol pump of Bhagalpur, on April 20, 1983. In the course of investigation by the police it transpired that they were kidnapped from the petrol pump on the earlier day i.e. on April 19, 1983 and the petitioner Vijay Narain Singh demanded a ransom of Rs. 50,000 from the father of the victims. The demand for ransom having not been fulfilled, the two boys were done to death brutally and their dead bodies were thrown at a place near Mount Assis School and Zila School and were discovered the next morning. On the basis of first information report a case was registered at Bhagalpur Kotwali (Police Case No. 281 dated April 20, 1983) under ss. 364, 302 and 201, all read with s. 34 and s. 120B of the Indian Penal Code, 1860 against the petitioner Vijay Narain Singh, his brother Dhanonjoy Singh, one Bimlesh Mishra and two unknown accused. The petitioner along with his co-accused has been committed to the Court of Sessions to stand his trial in Sessions Case No. 348 of 1983 and charges have been framed under s. 302 read with s. 34/120B, 386 and 511 of the Indian Penal Code and the case was set down for evidence on February 27, 1984 A learned Single Judge of the Patna High Court by his order dated August 9, 1983 appears to have directed that the petitioner be enlarged on bail of Rs. 10,000 with two sureties of the like amount to the satisfaction of the Chief Judicial Magistrate, Bhagalpur. The District Magistrate, Bhagalpur on being satisfied that his detention was necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention on August 16, 1983 before the petitioner could be released on bail But the petitioner moved a petition in the Patna High Court for grant of a writ of habeas corpus while he was still in jail challenging the impugned order of detention. When the matter came up for hearing before the High Court on October 5, 1983, the learned Judges adverted to the counter-affidavit filed on behalf of the State that the impugned order of detention was prepared in advance for service on the petitioner when he comes out of jail on the strength of the bail order issued by the High Court but by mistake the three copies of the order instead of being sent to the District Magistrate's office for service were wrongly delivered at the Central Jail, Bhagalpur. The learned Judges accordingly by their order of even date dismissed the writ petition holding that they were satisfied that the petitioner was not in detention under the impugned detention order. They however observed that if and when the petitioner was served a copy of the detention order and placed under detention in prison, he could file a fresh petition for a writ of habeas corpus. In stead of moving the High Court, the petitioner has filed this petition under Art. 32 of the Constitution before this Court. The order of detention is in two parts, the first of which lays a factual basis for making the order on the ground that the petitioner is an anti-social element. The second part of the impugned order is styled as grounds. But it would be

seen that the grounds mentioned therein are one and the same viz. his detention was necessary with a view to preventing him 'from acting in any manner prejudicial to the maintenance of public order'.

At the hearing, learned counsel for the petitioner advanced no submission that the petitioner was not an 'anti- social element' within the meaning of s. 12 (2) of the Bihar Control of Crimes Act, 1981 but rested himself content by advancing a twofold submission, namely: (1) The impugned order of detention passed by the District Magistrate, Bhagalpur under s. 12(2) of the Act must be held to be void under Art. 22(5) of the Constitution as one of the grounds was too remote and not proximate in point of time and had therefore no rational connection for the subjective satisfaction of the District Magistrate s. 12(2) of the Act. He relied upon the principles laid down by this Court in Shibban Lal Saksena v. State of Uttar Pradesh & Ors. (1) followed in serveal subsequent cases, and particularly on the majority decision in the recent case of Kamlakar Prasad Chaturvedi v. State of Madhya Pradesh & Anr(2 And The impugned order of detention was mala fide and constitutes a flagrant abuse of power on the part of the District Magistrate as it is meant to subvert the judicial process by trying to circumvent the order passed by the High Court enlarging the petitioner on bail. There is, in my opinion, no substance in any of these contentions but before. I deal with them I must touch upon the question raised in the majority opinion.

Inasmuch as the District Magistrate has chosen to take recourse to s. 12(2) of the Act which is designed to make special provisions for control and suppression of anti- social elements with a view to maintenance of public order, the question at once arises : Whether the petitioner answers the description of an 'antisocial element' as defined in s. 2(d) of the Act. 'Anti-social element' as defined in s. 2(d) means-

> 2(d) Anti-social element" means a person who is-
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> (i) either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code; or
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> (ii) habitually or abets the commission of offences under the Suppression of Immoral Traffic in women & Girls Act, 1956; or
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> (iii) who by words or otherwise promotes or attempts to promote on grounds of religion, race, language, caste or community or any other grounds whatsoever, feelings of enmity or hatred between different religions, racial or language groups of castes or communities; or
>
> (iv) has been found habitually passing indecent remarks to or teasing women or girls; or
>
> (v) who has been convicted of an offence under ss 25, 26, 27, 28 or 29 of the Arms Act, 1959."

There is no reasonable doubt that on the facts set out in the grounds of detention the petitioner answers the description of an anti-social element; but the suggestion in that he is not to be treated as one under s. 12(2) of the Act because the definition of 'anti-social element' in s. 2(d) of the Act is too narrow to include it. The word 'habitually' connotes some degree of frequency and continuity. 'Habitually' requires a continuance and permanence of some tendency, something that has developed into a propensity, that is, present from day-to-day; Stroud's Judicial Dictionary, 4th edn., vol. 2, p. 1204.

My learned brother Venkataramiah, J. is inclined to give a restricted meaning to the word 'habitually' as denoting 'repetitive' and he is of the view that no order of detention under s. 12(2) of the Act could be made on the basis of a 'single instance', as a single act cannot be said to be forming the habit of the person. That is to say, the act complained of must be repeated more than once and be inherent in his nature Further, he is inclined to think that section under s. 12(2) of the Act can only be taken in resect of persons against whom there are verdicts of guilt after the conclusion of trials. According to him, merely on the basis of institution of criminal cases a person cannot be labelled as an anti-social element. I find considerable difficulty in subscribing to either of his views.

According to its ordinary meaning, the word 'habitual' as given in Shorter Oxford English Dictionary, vol. 1, p. 910 is :

> "A. adj (1) Belonging to the habit or inward disposition, inherent or latent in the mental constitution;
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> (2) of the nature of a habit; fixed by habit; constantly repeated, customary.
>
> B. A habitual criminal, drunkard, etc."

A person is a habitual criminal who by force of habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind, that makes him dangerous to the society in general. In strengthen language the word 'habitually' means 'by force of habit'. The Act appears to be based on Prevention of Crime Act 1908 (c-59). By Prevention of Crime Act, as amended by the Indictments Act, 1915, a person after three previous convictions, after attaining sixteen years of age could, with the consent of the Director of Public Prosecution in certain cases, be charged with being a habitual criminal and, if the charge was established, he could, in addition to a punishment of penal servitude, in respect of crime for which he has been so convicted, receive a further sentence of not less than five years or more than 10 years, called a sentence of preventive detention. Upon this question of a man's leading persistently a dishonest or criminal life, where there has been a considerable lapse of time between a man's last conviction and the commission of the offence which forms the subject of the primary indictment at the trial, notice containing particulars must have been given and proved of the facts upon which the prosecution relied for saying that the offender is leading such a life.

If, on the other hand, the time between a man's discharge from prison and the commission of the next offence is a very snort one, it may be open to the jury to find that he is leading persistently a dishonest or criminal life by reason of the mere fact that he has again committed an offence so soon after his discharge from a previous one, provided the notice has state this as a ground. This essentially is a question of fact. The scheme under the English Act is entirely different where a person has to be charged at the trial of being a habitual criminal. Therefore, the considerations which govern the matter do not arise in case of preventive detention under s. 12(2) of the Act.

I find it difficult to share the view that whereas under sub-cl. (iii) or sub-cl. (v) of s. 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-cl. (i), sub-cl. (ii) or sub-cl. (iv) because of the word 'habitually' there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl.

(ii) or in sub-cl. (iv) by the person concerned to treat him as an 'anti-social element'.

I also do not see why s. 12 (2) of the Act should be confined in its operation against habitual criminals who have a certain number of prior convictions for offences of the 'character' specified. The definition of 'anti-social element in s.2 (d) of the Act nowhere requires that there should be number of prior convictions of a person in respect of offences of a particular type. I cannot also share the view that the commission of an act referred to in one of the sub-cl. (i), sub-cl. (ii) or sub-cl. (iv) of s 2 (d) and any other act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an 'anti-social element'. Further, I do not think it is correct to say that merely because there was an acquittal of such a person, the detaining authority cannot take the act complained of leading to his trial into consideration. It may be that the trial of a dangerous person may end in an acquittal for paucity of evidence due to unwillingness of witnesses to come forward and depose against him out of fright. If a person with criminal tendencies consistently or persistently or repeatedly commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offences affecting human body or Chapter XVII dealing with offences against property of the Indian Penal Code, there is no reason why he should not be considered to be an 'anti-social element'.

It is not difficult to conceive of a person who by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code. It however does not follow that because of the word 'habitually' in sub-cl. (i), sub-cl. (ii) or sub-cl (iv), there should be a repetition of same class of acts or omissions referred to in sub-cl. (i), sub-cl. (ii) or in sub-cl. (iv) by the person concerned before he can be treated to be an anti-social element and detained by the District Magistrate under s.12(2) of the Act. In my view, it is not required that the nature or character of the anti- social acts should be the same or similar. There may be commission or attempt to commit or abetment of diverse nature of acts constituting offences under Chapter XVI of the Indian Penal Code. What has to be 'repetitive' are the anti-social acts.

Those who are responsible for the national security or for the maintenance of public order must be the sole judges of what the national security or public order requires. Sufficiency of grounds is not

for the Court but for the detaining authority for the formation of his subjective satisfaction that the detention of a person under s. 12(2) of the Act is necessary with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The power of preventive detention by the District Magistrate under s.12(2) is necessarily subject to the limitations enjoined on the exercise of such power by Art. 22(5) of the Constitution. It has always been the view of this Court that the detention of individuals without trial for any length of time, however short, is wholly inconsistent with the basic ideas of our Government and the gravity of the evil to the community resulting from anti- social activities can never furnish an adequate reason for invading the personal liberty of the citizen except in accordance with the procedure established by law. The Court has therefore in a series of decisions forged certain procedural safeguards in the case of preventive detention of citizens. As observed by this Court in Narendra Purshotam Umrao v. B.B. Gujral(1), when the liberty of the subject is involved, whether it is under the Preventive Detention Act or the Maintenance of Internal Security Act or the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act or any other law providing for preventive detention-

> "It is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupul-
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> ously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law."

Nonetheless, the community has a vital interest in the proper enforcement of its laws particularly in an area where there is worsening law and order situation, as unfortunately is the case in some of the States today in dealing effectively with persons engaged in anti-social activities seeking to create serious public disorder by ordering their preventive detention and at the same time in assuring that the law is not used arbitrarily to suppress the citizen of his right to life and liberty. The impugned order of detention has not been challenged on the ground that the grounds furnished were not adequate or sufficient for the satisfaction of the detaining authority or for making of an effective representation. The Court must therefore be circumspect in striking down the impugned order of detention where it meets with the requirements of Art. 22(5) of the Constitution and where it is not suggested that the detaining authority acted mala fide or that its order constituted an abuse of power.

Turning to the merits of the contentions raised, I am quite satisfied that the impugned order is not vitiated because some of the grounds were non-existent or irrelevant or were too remote in point of time to furnish a rational nexus for the subjective satisfaction of the detaining authority. The two decisions in Shibban Lal Saksena's and Kamlakar Prasad Chaturvedi's cases are clearly distinguishable on facts. In Shibban Lal Saksena's cases the detenu had been supplied with two grounds for his detention. Subsequently, the detaining authority revoked one of the grounds communicated to him earlier. It was contended on his behalf that in such circumstances the detention was illegal and he was entitled to be released. The contention on behalf of the State was that although one of the grounds upon which the original order of detention was based was unsubstantial or non-existent and could not be made a ground of detention, nonetheless the remaining ground was sufficient to sustain the detention order. The Court rejected this contention

and held that it was stated that the sufficiency of the grounds upon which the subjective satisfaction of the detaining authority is based, provided they have a rational probative value and are not extraneous so the scope or purpose of the legislative provision cannot be challenged in the Court except on the ground of mala fides. It was observed:

> "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 detenu under s.7 of the Act. What has happened, however, in this case is somewhat peculiar. The Government itself, in its communication dated the 13th of March, 1953, has plainly admitted that one of the grounds upon which the original on or 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 s.3(1)
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> (a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative."

The question was whether in such circumstances the original order made under s.3(1) (a) of the Preventive Detention Act, 1950 could be allowed to stand. The Court laid down that if one of the two grounds was irrelevant for the purpose of the Act or was wholly illusory, this would vitiate the detention order as a whole. That is a principle well-settled since the well-known case of Keshav Talpade v. The King Emperor(1): The Court reiterated the principle and said that it was not for the Court to examine whether the two grounds upon which the detention order was based were good or bad nor could it attempt to assess in what manner and to what extent each of the 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 based. It then added:

> "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, 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."

Following the decision in Shibban Lal Sakesena's case, the Court in Kamlakar Prasad Chaturvedi's case, supra, by a majority of 2:1 held the detention order dated May 6, 1983 passed by the District Magistrate under s.3(2) of the National Security Act, 1980 to be invalid inasmuch as some of the grounds were found to be too remote and not proximate in point of time. Per contra, Desai, J. following the recent decision of this Court in Fitrat Raza Khan v. State of U.P. & Ors held that there is no rigid or mechanical test to be applied. In Fitrat Raza Khaa's case, the Court held that when both the incidents there were viewed in close proximity, the propensity of the petitioner to resort to prejudicial activity became manifest.

In Fitrat Raza Khan's case, supra, the first incident was of August 13, 1980 when the communal riots broke out in Moradabad city, and the second of July 24, 1981. Although there was a lapse of a year between the two incidents, the second incident of July 24, 1981 was just on the eve of the Id festival and the ground alleged was that the petitioner was trying to instigate the Muslims to communal violence by promise of better arms, with a view to an open confrontation between the two communities. It was observed that the two grounds as set out in the order of detention were nothing but narration of facts brining out the antecedent history of the detenu and that the past conduct or the antecedent history of a person can properly be taken into account in making an order of detention and had observed:

> "It is true that the order of detention is based on two grounds which relate to two incidents, one of August 13, 1980, and the other of July 24, 1981, i.e., the second incident was after a lapse of about a year, but both the incidents show the propensities of the petitioner to instigate the members of the Muslim community to communal violence. The unfortunate communal riots which took place in Moradabad city led to widespread carnage and bloodshed resulting in the loss of many innocent lives. The memory of the communal riots is all too recent to be a thing of the past. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order. ********** It cannot be said that the prejudicial conduct or antecedent history of the petitioner was not proximate in point of time and had no rational connection with the conclusion that his detention was necessary for maintenance of public order." It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order.

Learned counsel for the petitioner also submitted that the ordinary criminal process could not be circumvented by resort to preventive detention. In somewhat similar circumstances, the Court recently in Alijan Mian v. District Magistrate, Dhanbad & Ors(1). held that merely because there was pending prosecution and the accused were in jail, that was no impediment for their detention under s.3(2) of the National Security Act, 1980 if the detaining authority was satisfied that their being enlarged on bail would be prejudicial to the maintenance of public order. The same view has been reiterated by this Court in Raisuddin Babu Tamchi v. State of U.P. & Anr(2).

For my part, I would therefore, for the reasons stated, dismiss the writ petition as well as the connected special leave petition.

VENKATARAMIAH, J. This is a petition under Article 32 of the Constitution. The petitioner has questioned in this case the validity of an order of detention dated August 16, 1983 passed by the District Magistrate, Bhagalpur, State of Bihar, directing the detention of the petitioner under sub-section (2) of section 12 of the Bihar Control of Crimes Act, 1981 (hereinafter referred to as 'the Act') read with Notification No. H(P) 6844 dated June 20, 1983 of the Government of Bihar vesting the

powers of detention in the District Magistrate, Bhagalpur.

The petitioner states that he having passed him M.A. Examination was studying law in the Bhagalpur Law College in the year, 1983. On the basis of information received on April 20, 1983 about the unnatural deaths of two persons within the jurisdiction of the Bhagalpur Kotwali Police Station, the police conducted investigation and at the conclusion of that investigation they filed a charge sheet in the court of the Magistrate having jurisdiction over the area in question, who committed him alongwith some others to the Court of Sessions for being tried for offences punishable under section 302 read with section 120B, 386 and 511 of the Indian Penal Code. The said case is even now pending. The petitioner moved the High Court of Patna for enlarging him on bail during the pendency of the said Session trial. On August 8, 1983, the bail petition was heard and the High Court made an order enlarging the petitioner on bail, the relevant part of which read thus:

> "8.8.83. Heard learned counsel for the petitioner and the State.
>
> The submission of the petitioner is that he has not been named in the F.I.R. and the only material against him is that when Kashi Nath Bajoria, father of the deceased learnt about taking away of his sons from the petrol pump he went to the house of petitioner and his brother Dhananja Singh and enquired about his sons. On his enquiry the petitioner, his brother Bijoy and his mother demanded a sum of Rs 50,000 for release of his sons. It is further submitted that three persons gave their confessional statement but even they did not name the petitioner-
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> Whether the petitioner was in conspiracy or had hand in the crime will be examined at the trial if such occasion arises. In the circumstances of the present case, let petitioner be released on bail of Rs 30,000 (Rupees ten thousand with two sureties of the like amount each) to the satisfaction of the Chief Judicial Magistrate, Bhagalpur in Bhagalpur Kotwali P.S. Case No. 281/83 dated 20.4.83."

Even before the petitioner could furnish bail and secure his release from jail as per the above order, the District Magistrate passed the impugned order of detention on August 16,1983, the relevant part of which reads thus:

> Order No. 151 dated 16.8.83 Whereas I am satisfied that with a view to preventing Shri Vijay Singh s/o Late Shri Jagannath Singh of Mohalla Mundichak P.S. Kotwali. District Bhagalpur from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order that he be detained.
>
> Now, therefore, in exercise of the powers conferred by (Bihar Act 7 of 1981) sub-section 2 of section 12 of the Bihar Control of Crimes Act, 1981 read with Notification H(P) 6844 dated 20.6.83 of the Government of Bihar vesting the powers of detention in District Magistrate, Bhagalpur, I hereby direct that Shri Vijay Singh be detained.

He shall be detained in Special Central Jail, Bhagalpur and classified as C and in division III.

District Magistrate Bhagalpur"

The grounds of detention in support of the above order read thus:

"In pursuance of section 17 of the Bihar Control of Crimes Act, 1981 (Bihar Act 7 of 1981) Shri Vijay Singh s/o Late Shri Jagannath Singh of Mohalla Mundichak, P.S. Kotwali, District Bhagalpur is informed that he was been directed to be detained in my Order No. 151/C dated 16.8.83.

The following incidents conclusively show that Shri Vijay Singh is an "anti-social element". His criminal activities enumerated below date back to the year 1975.

(i) On 15.4.75 Vijay Singh alongwith his associates went to the shop of Gopal Ram Ramchandra, cloth dealer in Hariapatti market of Bhagalapur town armed with unlicensed pistol and forcibly demanded subscription at the point of pistol. On refusal, he created a row in the shop and indulged in filthy abuses, as a result of which the shopkeepers of the area became terribly panicky and feeling of uttar insecurity prevailed in the area. A case was instituted in Kotwali P.S. vide Case No. 25 dated 15-4-75 under section 144/448 I.P.C. In this case, he was chargesheeted.

(ii) On 17/18-6-82 at night Vijay Singh was found teasing and misbehaving with females returning from Cinema hall at Khalifabagh Chowk, one of the busiest throughfares of the town. On information, the police rushed to the spot. Vijay Singh had the avdacity to misbehave with the police personnel including the Dy. S.P. (Hqrs.) who happened to reach there. A case was instituted in this connection vide Kotwali P.S. Case No. 349 dated 18-6-82 u/s 294/353 I. P. C. In this case, Vijay Singh was chargesheeted.

Shri Vijay Singh has been detained on the following grounds:-

Grounds:

On 19.4.1983, the criminal activities of Vijay Singh mounted to its peak, when two young sons of Shri Kashinath Bajoria, owner of Bajoria Petrol Pump, Bhagalpur, namely, Krishna Kumar Bajoria and Santosh Kumar Bajoria were kidnapped from their petrol pump. Vijay Singh demanded a sum of Rs 50,000 (Fifty thousand) from their father as ransom. As the demand could not be fulfilled, the above-named two innocent young men were done to death in a ghastly manner and their dead bodies thrown away near Mount Assisi School and Zila School which were discovered next morning. These double murders caused panic throughout the Bhagalpur Town and public order was gravely disturbed. Only after intensive deputation of police force,

public confidence was restored and public order maintained. A case was instituted vide Kotwali P.S. Case No. 281 dated 20-4-83 under sections 364/302/201/34/120(b) I.P.C Charge-sheet has been submitted in this case against Vijay Singh and others. Investigation shows that Vijay Singh is mainly instrumental to this heinous crime.

(Copy of F.I.R., brief of the case and copy of Memo of evidence enclosed).

In the circumstances, I am satisfied that if he is allowed to remain at large, he will indulge in activities prejudicial to the maintenance of public order.

For prevention of such activities, I considered his detention necessary. Shri Vijay Singh is informed that he may make a representation in writing against the order under which he is detained. His representation, if any, may be addres sed to the Deputy Secretary, Home (Police) Department, Government of Bihar, Patna, and forwarded by the Superintendent of Jail through special messenger with a copy to the undersigned.

Sd/-S.K. Sharma 16/8/83 District Magistrate Bhagalpur"

Aggrieved by the above order of detention the petitioner filed a petition under Article 226 of the Constitution before the High Court. On behalf of the detaining authority it was contended that the detention order had been prepared in advance for service on the petitioner when he came out of the jail on the strength of the bail order which he had obtained in the criminal case; that all the copies of order had been sent to the District Magistrate's office but by mistake of the messenger three copies had been wrongly delivered at the Central Jail Bhagalpur where the petitioner had been kept and that when the mistake was detected by the Superintendent of the Central Jail, he did not serve the copy of the order and had returned all the copies. It was urged that since the order of detention had not been served on the petitioner, the petition was not maintainable. Accepting the above plea, the High Court held that there was no occasion to quash the order of detention as the petitioner had not been detained pursuant to it. Accordingly it rejected the prayer of the petitioner. Thereupon the petitioner filed the above writ petition before teis Court, He has also filed a special leave petition being S.L.P. (Criminal) 3306 of 1983 against the order of the High Court.

In this Court, the respondents have not depended upon the technical plea raised by them before the High Court but have tried to justify the order of detention on merits.

I shall give a brief summary of the relevant provisions of the Act. The Act was passed in 1981. It was enacted, as its long title suggests, to make special provisions for the control and suppression of antisocial elements with a view to maintenance of public order. Section 2(d) of the Act defines the expression 'Anti-Social Element' thus:

"2.(d) "Anti-Social Elements" means a person who is

(i) either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII of the Indian Penal Code ; or

(ii) habitually comints or abets the commission of offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 ; or

(iii) who by words or otherwise promotes or attempt to promote on grounds of religion, race, language, cast or community or any other grounds what-soever feelings of enmity or hatred between different religions, racial or language groups of castes or communities ; or

(iv) has been found habitually passing indecent remarks to or teasing women or girls ; or

(v) who has been convicted of an offence under sections 25, 26, 27, 28 or 29 of the Arms Act of 1959." (underlining by us) Section 3 to 11 of the Act deal with the provisions relating to externment of anti-social elements. Chapter II of the Act deals with the provisions providing for the preventive detention of anti-social elements. The relevant part of section 12 of the Act which is in Chapter II of the Act reads :

"12. Power to make order detaining certain persons. The State Government may-(1) 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 and there is reason to fear that the activities of anti-social element cannot be prevented otherwise than by the immediate arrest of such person make an order directing that such anti- social element 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, the State Government is satisfied that it is necessary so to do, it may by an order in writing direct, that during such period as may be specified in the order, such District Magistrate may also, if satisfied as provided in sub-section (1) exercise the power conferred up-on by the said sub-section.. (underlining by us) It is seen from section 12 of the Act that it makes provision for the detention of an anti-social element. If a person is not an anti-social element, he cannot be detained under the Act. The detaining authority should, therefore, be satisfied that the person against whom an order is made under section 12 of the Act is an anti-social element as defined in section 2 (d) of the Act. Sub-clauses (ii), (iii) and (v) of section 2 (d) of the Act which are not quite relevant for the purposes of this case may be omitted from consideration for the present. The two other sub-clauses which need to be examined closely are sub-clauses (i) and

(iv) of section 2 (d). Under sub-clause (i) of section 2 (d) of the Act, a person who either by himself or as a member of or leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI dealing with offenences affecting the human body or Chapter XVII dealing with offences against property, of the Indian Penal Code is considered to be an anti-social element. Under sub-clause (iv) of section 2 (d) of the Act, a person who has been habitually' passing indecent remarks to, or teasing women or girls, is an anti-social element. In both these sub-clauses the word 'habitually' is used. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. If connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions. This appears to be clear from the use of the word 'habitually' separately in sub-clause

(i), sub-clause (ii) and sub-clause (iv) of section 2 (b) and not in sub-clauses (iii) and (v) of section 2 (d) . If the State Legislature had intended that a commission of two or more acts or omissions referred to in any of the sub-

clauses (i) to (v) of section 2 (d) was sufficient to make a person an 'anti-social element', the definition would have run as 'Anti-Social Element' means 'a person who habitually is .....' As section 2 (d) of the Act now stands, whereas under sub-clause (iii) or sub-clause (v) of section 2 (d) a single act or omission referred to in them may be enough to treat the person concerned as an 'anti-social element', in the case of sub-clause (i), sub-clause (ii) or sub-clause

(iv), there should be a repetition of acts or omissions of the same kind referred to in sub-clause

(i), sub-clause (ii) or in sub-clause (iv) by the person concerned to treat him as an 'anti-social element'. Commission of an act or omission referred to in one of the sub-clauses (i). (ii) and (iv) and of another act or omission referred to in any other of the said sub-clauses would not be sufficient to treat a person as an 'anti-social element'. A single act or omission falling under sub-clause

(i) and a single act or omission falling under sub-clause

(iv) of section 2 (d) cannot, therefore, be characterised is a habitual act or omission referred to in either of them. Because the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same class or kind, if the acts or omission in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between the they cannot be treated as habitual ones.

In the present case the District Magistrate has relied on three incidents to hold that the petitioner is an anti- social element. They are-(i) that on April 15, 1975 the petitioner alongwith his associates had gone to the shop of a cloth dealer of Bhagalpur Town armed with an unlicensed pistol and had forcibly demanded subscription at the point of a gun and (ii) that on June 17/18, 1982 the petitioner

was found teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner. Moreover the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (i) of section 2(d) of the Act, the second one falls under sub-clause (iv) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The District Magistrate does not appear to have applied his mind to the above aspects of the case. The third ground which is based on the pending Sessions case is no doubt of the nature of acts or commissions referred to in sub-clause

(i) of section 2(d) but the interval between the first ground which falls under this sub-clause and this one is nearly eight years and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-clause (i) of section 2 (d). When I say so I do not certainly minimise the gravity of the offence alleged to have been committed by the petitioner which is still to be tried by the Sessions Court. If the petitioner is found guilty by the Court, he will have to be awarded appropriate punishment. But the point for consideration now is whether the filing of the charge sheet is sufficient to bring the petitioner within the mischief of the Act. The Court should examine the case without being overwhelmed by the gruesomeness of the incident involved in the criminal trial. 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 tee 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.

Having given my anxious consideration to the case, I am of the view that it is not possible to hold that the petitioner can be called an 'anti-social element' as defined by section 2 (d) of the Act. The order of detention impugned in this case, therefore, could not have been passed under section 12 (2) of the Act which authorises the detention of anti-social elements only.

Before leaving this case, I should state that a number of decisions were cited before us in which it had been held that an order of detention based on a criminal charge which is still to be tried may not be invalid and that an order granting bail by a criminal court cannot be a bar to the passing of an order of detention. But I have not found it necessary to deal with them here as they would have become relevant only if I had been satisfied that the petitioner was an anti-social element. Moreover the orders of detention questioned in those cases were governed by the provisions of the statutes under which they had been issued.

In the result, I quash the order of detention passed against the petitioner. The petition is accordingly allowed. The petitioner shall be set at liberty forthwith unless he is required to be in custody on some other ground.

H.S.K. Petition allowed.