

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(Crl.) No. 1490/2009 and Crl.M.A. No. 12273/2009**

% Reserved on : 06th January, 2010.
Date of Decision: 25th January, 2010.

Khurvesh @ Pappu @ Pahalwan . . . Petitioner
through : Mr.Vikas Arora, Advocate.

VERSUS

State & Anr. . . Respondents
through: Mr.Vikas Pahwa, Addl. Standing
Counsel with Mr. Piyush Singh,
Advocate.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner has been detained vide orders dated 8th June, 2009 passed by the Commissioner of Police, Delhi, in exercise of his powers under sub-Section 2 of Section 3 of the National Security Act, 1980 (hereinafter called 'the Act') recording the satisfaction that such detention is necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. This order was approved by the Lt. Governor/respondent no.2 on 18th June, 2009. The Advisory Board has also confirmed this order of detention on the

basis of which the respondent no.2 has passed the order dated 5th August, 2009 directing that the petitioner shall be detained for a period of 12 months from the date of detention i.e. 8th June, 2009. Before filing the present petition, the petitioner had made a representation before the respondent no.2 to recall the aforesaid orders, but without any success in as much as respondent no.2 rejected the said representation on 9th September, 2009. Left with no other departmental remedy, the petitioner has knocked the doors of this court seeking issuance of a writ of certiorari thereby quashing the said detention order dated 5th August, 2009 and directing release of the petitioner from jail.

2. Before we highlight the grievance of the petitioner on the basis of which the impugned order is challenged, it would be appropriate to take note of the material contained in the said detention order dated 8th June, 2009 to find out the basis for the passing of such an order. The impugned order dated 8th June, 2009 contains the grounds of detention and these grounds start with the observations that the petitioner is a desperate character and a hardened criminal of the area of police station Nand Nagri, Delhi. It is further alleged that he started his criminal activities in the year 1996 at the age of 18 years and has been involved in 32 criminal cases including that of voluntary causing hurt, wrongful restraint, criminal intimidation, extortion, robbery, rape, obstructing public servants from discharging their official duties, culpable homicide, attempt to murder and murder etc. apart from committing the acts

punishable under the Arms Act. Even preventive action under the provisions of Section 107/151 of the Code of Criminal Procedure had been taken against him. Criminal record of the petitioner is tabulated thus :-

S.No.	Case FIR No.	Date	Under Section	P.S.	Remarks
1	164	5.4.96	308/34 IPC	Nand Nagri	Acquitted
2	912	26.12.96	341/323/34 IPC	Nand Nagri	Compromised
3	240	29.3.97	25 A. Act	Seema Puri	Acquitted
4	544	10.8.97	341/324/314 IPC	Nand Nagri	Acquitted
5	167	24.3.98	323/341/376/506/34 IPC	Nand Nagri	Acquitted
6	297	6.5.99	324/34 IPC	Nand Nagri	Compromised
7	502	16.10.00	324/34 IPC	Nand Nagri	Compromised
8	603	25.12.00	392/397/34 IPC	Nand Nagri	Acquitted
9	66	10.2.01	382/34 IPC	Nand Nagri	Acquitted
10	57	16.2.01	307/34 IPC	M.S. Park	Acquitted
11	146	25.3.01	392/397/411/34 IPC	Nand Nagri	Acquitted
12	305	3.4.01	392 IPC	Sahibabad UP	Acquitted
13	318	9.4.01	392 IPC	Sahibabad UP	Discharged
14	324	12.4.01	392 IPC	Sahibabad UP	Acquitted
15	181	19.4.01	393/34 IPC	Nand Nagri	Acquitted
16	154	22.4.01	186/353/307/34 IPC	Gokul Puri	Acquitted
17	220	10.5.01	302/120-B/34 IPC and 25/27 A. Act	Nand Nagri	Acquitted
18	279	12.8.01	25 A. Act	Ch. Puri	P. Trial
19	225	30.4.03	384/386/511/34 IPC	Nand Nagri	Acquitted
20	258	15.5.03	186/353/332/307 IPC and 25/27 A. Act	Nand Nagri	P. Trial
21	344	6.6.04	341/394/397/307/34 IPC	Nand Nagri	Acquitted
22	280	9.7.04	394/468/471/31 IPC	Seema Puri	Convicted
23	313	14.7.04	392/34 IPC	Gokul Puri	P. Trial
24	215	1.9.04	307/34 IPC	Kanjhawala	P. Trial
25	778	24.9.04	302/201/34 IPC	Loni Gaziabad	P. Trial
26	491	19.10.04	309 IPC	Seema Puri	Acquitted
27	580	4.7.07	25 A. Act	Nand Nagri	P. Trial
28	27	26.1.08	392/34 IPC	Shahdara	P. Trial
29	156	22.3.08	341/323/386/380/511 /506/34 IPC	Nand Nagri	P. Trial
30	195	16.4.08	307/34 IPC	Nand Nagri	Acquitted
31	18	23.4.08	186/353/307 IPC and 25/27 A.Act	Spl. Cell Delhi	P. Trial
32	DD No. 8-A	28.3.09	107/151 Cr.P.C	Nand Nagri	P. Trial

3. On the basis of said record, it is opined that the petitioner is so desperate and a dangerous criminal that witnesses in pending trial are likely to be intimidated by his presence outside the jail. From the remarks column, it is discerned that out of said 32 cases, the petitioner has been acquitted in 17 cases, discharged in one case, 3 cases resulted in compromise, convicted in one case and in respect of 10 cases the trial is still pending.

4. After mentioning the particulars of the 32 cases in a summary form, as noted above, the Commissioner of Police relied upon 5 cases for passing the detention order against the petitioner, particulars of which are following: -

“1. FIR No. 27 dated 26.1.2008 u/s 392/34 IPC, P.S. Shahdara, Delhi.

2. FIR No. 156/2008 dated 22.03.2008 u/s 323/341/380/386/511/506/34 IPC, P.S. Nand Nagri, Delhi.

3. FIR No. 195/2008 dated 16.04.2008 u/s 307/34 IPC, P.S. Nand Nagri, Delhi.

4. FIR No. 18/2008 dated 23.04.2008 u/s 186/353/307 IPC and 25/27 Arms Act, P.S. Spl. Cell, New Delhi.

5. DD No. 8-A dated 28.03.2009 u/s 107/151 CrI.P.C. P.S. Nand Nagri, Delhi.”

5. With regard to the first case mentioned above, details of which are given to the effect that the complainant Sh. Vineet Gupta, in whose house four young boys entered on 26th January, 2008 and went to the room of his brother Kushal and took away the belongings of Kushal i.e.

Rs.7-8,000/-, driving license, income tax card, golden ring from the finger of his left hand and also took away the money from the pocket of the trousers of Amit, friend of Kushal, who was with him at that time. They also snatched his golden chain weighing 27 grams containing a locket mentioning 'G' thereon. They were identified as Khurvesh @ Rajinder (petitioner herein) and Ajay s/o Sh. Gauri Shankar. However, on 4th March, 2008, when the test identification parade was conducted, due to the terror and fear imposed by the accused persons, the complainant did not identify them. The case is still pending trial.

6. The second case, i.e. FIR No. 156/2008 was lodged by one Prem Kumar Sahu, who had lodged a report that on 21st March, 2008, at about 2.00 p.m., the petitioner, who is the resident of the same locality, stopped him and threatened him to pay Rs.15,000/- if he wanted to live peacefully. At about 12.00 p.m., he found that the petitioner along with his brother Kamla and one other boy were trying to break the lock of - the shutter of his shop when the complainant tried to apprehend Kamla and raised alarm, the petitioner and his co-accused gave fist blow to him and fled away. A complaint was lodged and Kamla and Hari Singh were arrested on the identification of the complainant. The petitioner was granted anticipatory bail and the case is pending trial.

7. The third FIR no.195/2008 dated 16th April, 2008 under Sections 307/34 where again Prem Kumar Sahu is the complainant and has alleged that after the earlier FIR was lodged by him, the petitioner

came to him on 16th April, 2008 at 10.20 a.m. and said that he had spent Rs.80,000/- in obtaining the bail in the case got registered against him and, therefore, he threatened not to spare him. He directed his brother and other boy to catch him and said that they would finish him. Kamal and his associate caught hold of him and the petitioner took out a pistol and fired at him to kill him. The complainant and his nephew received injuries. On 17th April, 2008, one Amit@ Sonu was arrested and he confessed to have committed the crime. On 17th January, 2008, Gaurav was arrested under Section 25 of the Arms Act and the petitioner was arrested in FIR No. 18/2008 under Sections 186/353/307 IPC and 25 of the Arms Act. The other accused were also arrested. These accused persons refused to participate in the TIP proceedings. Kamla also surrendered in the Court on 4th June, 2008 and confessed to have committed the crime. Some discoveries have also been made pursuant to his statement. However, during the course of trial, the complainant who had even got bullet injuries, resiled from his statement and denied knowing the person who fired at him. It is alleged that this happened due to fear imposed by the petitioner. Because of this the case resulted in acquittal.

8. The fourth FIR, namely FIR NO. 18/2008 dated 23rd April, 2008 is under Section 186/353/307 IPC and Section 25/27 of the Arms Act which involves policemen and the case is pending trial.

9. The fifth case relates to DD No. 8-A dated 28th March, 2009 under Section 107/151 of the Code of Criminal Procedure relating to apprehension of breach of peace and causing disturbance and public tranquility. The *kalandra* is pending trial. After narrating these five instances, the Commissioner of Police in his impugned order has concluded as under; -

“The above mentioned criminal activities clearly show that Khurvesh @ Pappu @ Pehalwan is a desperate and hardened criminal whose activities are prejudicial to the maintenance of public order. His acts of violence against the public and property show his complete contempt for the law of the land. Since he usually keeps a firearm with him, people are afraid of deposing against him. His continuous criminal activities have disturbed the peace and tranquility of the society.

Despite his arrest and prosecution in number of cases, Khurvesh @ Pappu @ Pehalwan has not mended himself and has not deterred from his criminal activities which are highly prejudicial to the maintenance of public order.

At present Khurvesh @ Pappu @ Pehalwan is out of jail. Keeping in view his past criminal activities there is every apprehension /imminent possibility that he will again indulge in similar type of criminal activities, which will adversely affect the maintenance of public order.

Under the above circumstances it has become necessary to detain him with immediate effect under Section 3(2) of the National Security Act, 1980 to prevent him from further committing similar type of criminal activities prejudicial to the maintenance of public order.”

10. Mr. Vikas Arora, learned counsel appearing for the petitioner submitted that the aforesaid grounds mentioned in the impugned order do not justify the case of preventive detention. His submission was that frivolous cases are fostered upon the petitioner and that is the reason that in most of these cases, acquittal is on merit. However, the entire material and particularly the orders of the courts in those cases where the petitioner was acquitted on merits, was not even considered by the competent authority as those judgments were not placed before him. It is apparent, argued the counsel, from the fact that only 5 cases were taken note of and judgments in respect of 17 cases in which the petitioner was acquitted were not placed before the competent authority. His further submission was that no case was made out that the petitioner had threatened the witnesses. His fervent plea was that even the facts of the five cases, relied upon by the respondent no.1 while passing the detention order of the petitioner, would not justify the detention order. In respect of the first case, his submission was that the identification parade had already been conducted and the petitioner was not identified. Qua the second case, his submission was that the petitioner was even granted anticipatory bail which fact would go to show that there was nothing against the petitioner. The third case has already resulted into acquittal and therefore, cannot be the basis for detention of the petitioner, was the submission. In so far as the fourth case is concerned, the plea was that it relates to altercation with the

police authorities and the respondent cannot contend that the petitioner would be in a position to even terrorize or influence the police officials who are going to be the witnesses in the said case. The fifth case, the learned counsel pointed out, was only under Section 107/151 Cr.P.C. regarding alleged apprehension of breach of peace. He, thus, submitted that the observations of the competent authority that 'witnesses in the pending trial cases are likely to be intimidated by his presence outside jail' were totally uncalled for, and without the support of any cogent and reliable material. The last submission was that the main detention order is an act of *malafide* and a counter blast at the instance of the police officers, simply because of the reason that the petitioner had been making complaints against these police officers who were implicating the petitioner in false cases. He referred to such complaints which are annexed with the petition.

11. Mr. Vikas Pahwa, Additional Standing counsel who appeared for the respondent justified the passing of the detention order arguing that the subjective satisfaction of the concerned authority was based on the objective criteria and the relevant material which was examined by the authority while passing the order. His submission was that from the overall circumstances disclosed in the impugned order, it would manifest that a reasonable opinion was formed that the petitioner was a desperate character and a hardened criminal of the area and was indulging in activities, prejudicial to the maintenance of the public

order. According to him, this was the main reason for passing the order. Although other reason was also given, namely that people are afraid of deposing against him, he countenanced the submission of the learned counsel for the petitioner on the ground that his submission was solely based on the second reason.

12. He also referred to the various judgment in support of his submission. When the argument in this case were heard on 6th January, 2010, at that time reference to various judgments was made by the learned counsel for the respondent. On the conclusion of the argument, the learned counsel for the petitioner made a request that some time be given to him to file the compilation of judgments on which the learned counsel may rely, as he had not referred to any case law in support of his case at the time of arguments. It was orally indicated that he may do so within one week. We have waited for more than a week, but no such exercise is undertaken by the counsel for the petitioner. Therefore, we proceed on the basis of the submissions made before us at the time of the arguments, as noted above.

13. In **Ashok Kumar vs. Delhi Administration and Ors. (1982) 2 SCC 403**, the Supreme Court held that preventive detention is devised to afford protection to society. It was said that preventive measures, even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. Justification for such

detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. The Executive is empowered to take recourse to its power of preventive detention in those cases where the Court is genuinely satisfied that no prosecution could possibly succeed against the detenu because he is a dangerous person who has over-awed witnesses or against whom no one is prepared to depose.

14. The court also made a distinction between the concepts of ‘public order’ and ‘law and order’ in the following words: -

“13. The true distinction between the areas of 'public order' and 'law and order' lies not in the nature or quality of the Act, but in the degree and extent of its reach upon society. The distinction between the two concepts of 'law and order' and 'public order' is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions. In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not determinant of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. That test is clearly fulfilled in the facts and circumstances of the present case.

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| 14. | xxx | xxx | xxx | xxx |
| 15. | xxx | xxx | xxx | xxx |
| 16. | xxx | xxx | xxx | xxx |

17. What essentially is a problem relating to law and order may due to sudden sporadic and intermittent acts of physical violence on innocent victims in the metropolitan city of Delhi result in serious public disorder. It is the length, magnitude

and intensity of the terror wave unleashed by a particular act of violence creating disorder that distinguishes it as an act affecting public order from that concerning law and order. Some offences primarily injure specific individuals and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. The question is of the survival of the society and the problem is the method of control. Whenever there is an armed hold-up by gangsters in an exclusive residential area like Greater Kailash, Kalkaji or Lajpat Nagar and persons are deprived of their belongings like a car, wrist-watch or cash, or ladies relieved of their gold-chains or ornaments at the point of a knife or revolver, they become victims of organised crime. There is very little that the police can do about it except to keep a constant vigil over the movements of such persons. The particular acts enumerated in the grounds of detention clearly show that the activities of the detenu cover a wide field and fall within the contours of the concept of public order.”

15. We have specifically noted these observations as they pertain to the city of Delhi itself.

16. Yet again, the Supreme Court in the context of preventive detention, highlighted the distinction between ‘public order’ ‘security of state’ and ‘law and order’ in the case of **Commissioner of Police and**

Ors. vs. C.Anita (2004) 7 SCC 467 in the following words :-

“The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and

'public order' is one of the degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting public order' from that concerning 'law and order'. The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts.

8. "Public order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? (See *Kanu Biswas v. State of West Bengal* (1972) 3 SCC 831)

9. "Public order" is synonymous with public safety and tranquility: "it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State". 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. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. (See *Dr.*

Ram Manohar Lohia (Dr.) v. State of Bihar (1966) 1 SCR 709; 1966 CrLJ 608)

10. 'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. [See *Kishori Mohan Bera v. The State of West Bengal* (1972) 3 SCC 845 : AIR1972SC1749 ; *Pushkar Mukherjee v. State of West Bengal* (1969) 1 SCC 10; *Arun Ghosh v. State of West Bengal* (1970) 1 SCC 98; *Nagendra Nath Mondal v. State of West Bengal* (1972) 1 SCC 498].

17. The court highlighted that the true difference between the areas of 'law and order' and 'public order' lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon the society.

18. Applying this principle in the case at hand, the Court sustained the detention order in the following terms :-

“14. A bare reading of the order of detention shows the detenu was a history sheeter against whom more than 30 cases had been instituted. Two specific instances which indicated the gravity of his acts were

highlighted. Paragraphs 3 and 6 of the grounds of detention read as follows:

"3-Your unlawful acts in the area are creating terror in the minds of the public and that the law abiding citizens are afraid of buying plots/lands and building houses due to fear and they are also afraid to come forward to lodge any complaint to the police against you or make any representation.

6-Thus, you are indulging in goondaism land grabbing and your activities are causing a feeling of insecurity and fear in the public and thus are prejudicial to the maintenance of public order."

15. The Court cannot substitute its own opinions for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. That is the case here. There is no vagueness or staleness. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which have been precisely stated in paragraph 3 of the grounds of detention quoted above. The two incidents referred to show as to in what manner the detenu was demanding money from whosoever was purchasing land and giving threats to kill if the demands were not met. The incidents clearly substantiate the subjective satisfaction arrived at by the detaining authority as to how the acts of the detenu were prejudicial to the maintenance of public order. These aspects have not been considered by the High Court. Learned counsel for the detenu submitted that even if it is so the judgment of the High Court should not be set aside and the matter could be remitted back to it for fresh decision. We find no substance in such a plea. The order of detention has a specific purpose to serve. That being so, we set aside the judgment of the High Court. The detenu shall forthwith surrender to custody to serve the remainder period of sentence. The appeal is allowed."

19. When we apply these principles to the facts of the present case, the irresistible conclusion would be to uphold the detention order here as well. We may point out at the outset that the entire thrust of the arguments of the learned counsel for the petitioner was limited to one aspect namely, the presence of the petitioner was not likely to intimidate the witnesses. Though we would revert to this argument at a later stage, it is necessary to point out that the impugned order is not passed on this basis alone. No doubt, after giving the details of 32 criminal cases/activities registered against the petitioner, in the next paragraph at page 2 of the impugned order, it is remarked that the petitioner is so desperate and dangerous criminal that the witnesses in the pending trial court cases are likely to be intimidated by his presence outside the jail. However, after giving the details of the five cases, the detention order is founded on the following: -

“The above mentioned criminal activities clearly show that Khurvish @ Pappu @ Pehalwan is a desperate and hardened criminal whose activities are prejudicial to the maintenance of public order. His acts of violence against the public and property show his complete contempt for the law of the land. Since he usually keeps a firearm with him, people are afraid of deposing against him. His continuous criminal activities have disturbed the peace & tranquility of the society.”

20. The basic and the fundamental ground on which the order is founded is that the petitioner is a desperate and hardened criminal whose activities are prejudicial to the maintenance of the public order.

It is also mentioned that his continuous criminal activities have disturbed the peace and tranquility of the society. An apprehension is expressed that there is a possibility that the petitioner would indulge in similar type of criminal activities 'which will adversely affect the maintenance of public order'.

21. When confronted with this part of the order and the law laid down by the Apex Court in the aforesaid judgments, learned counsel for the petitioner could hardly give any convincing reply. It is, at this stage that he had mentioned that if there is any judgment on which he seeks to place reliance, he would provide the copy thereof, but has not done so. Going by the principles laid down by the Supreme Court in the aforesaid judgments and applying the same to the facts of this case, the impugned order is held to be justified. In this context, we may also refer to the Division Bench judgment of this court in the case of **Mohd. Afzal vs. Union of India and Ors.** 2004 Crl.L.J. 3461, the detention order in that case was passed almost under similar circumstances and was upheld by this court in the aforesaid judgment. In that case also, the detention order provided that the detinue had started his criminal activities in the year 1990 at the age of about 19 years and was involved in 18 criminal cases enlisted in the grounds. He had been acquitted/discharged in most of the cases. In 5 cases he was facing trial and 3 cases were under investigation when the detention order was passed. Though reference to 18 cases was made in the grounds of

detention, 2 cases which were stated to be under investigation had been specifically relied upon in the grounds of detention. On the basis of this material, the detaining authority had come to the conclusion that the said criminal activities clearly showed that the detenu was a desperate and dangerous criminal whose activities were prejudicial to the maintenance of the public order; his acts of violence against the public and property shows his complete contempt for the law of the land; he was usually found in possession of fire arms; the prosecution witnesses were extremely terrified to depose against him in court; his criminal activities had disturbed the normalcy of the society and he was such a dangerous and desperate criminal that he did not even spare the police officials in attacking them. Taking note of the exposition of law on 'public order' and 'law and order' [which exercise has already been undertaken by us above], the writ petition was dismissed, upholding the detention order, in the following terms: -

“13. Examining the grounds of detention, briefly referred to above, on the touchstone of the legal position as emerging from the afore-mentioned decisions, we are of the view that the activities relied upon by the detaining authority to come to the afore-mentioned conclusion cannot be said to be mere disturbance of "law and order". As noted in the grounds of detention, the criminal activities of the petitioner pertained to criminal intimidation, obstructing public servants in discharge of their official duties, etc. which, obviously, are not directed against a single individual but against the public at large having the effect of disturbing the even tempo of life of the community and thus, breaching the "public order". Thus, we are unable to hold that there was no material before the detaining authority to

come to the conclusion, it did, to say that the petitioner is a person of desperate and dangerous character and a menace to the society. The detaining authority is justified in forming the belief that the results in the trials in criminal cases were because of his dangerous character as even the persons directly affected were not coming forward to give evidence against him. We have, therefore, no hesitation in holding that the instances of petitioner's activities, enumerated in the grounds of detention, clearly show that his activities cover a wide field and fall within the contours of the concept of "public order" and the detaining authority was justified in law in passing the impugned order of detention against the petitioner.

14. As regards the plea of learned counsel for the petitioner that the impugned order is vitiated because it has been passed with a mala fide intention to frustrate the bail allowed to the petitioner, we are of the view that there is no substance in the contention. It is settled by a catena of decisions of the Apex Court that even when a person is in custody, a detention order can validly be passed if the authority passing the order is aware of the fact of his being in custody and he has reason to believe, on the basis of material placed before him, that there is imminent possibility of his being released on bail and that on being so released, he would in all probability indulge in prejudicial activities and to prevent him from doing so, it is necessary to detain him. A detention order cannot be struck down on the ground that the proper course for the authority was to oppose the bail application and if bail is granted notwithstanding such opposition, to question it before a higher Court, as is sought be pleaded by learned counsel for the petitioner. (See: Kamarunnissa Vs . Union of India (1991) 1 SCC 128 : 1991 CrLJ 2058 and Yogendra Murari Vs. State of U.P, AIR 1988 SC 1335 : 1988CrLJ1825). On the facts in hand, we are unable to accept the contention of learned counsel for the petitioner that the impugned detention order was passed merely to frustrate the order of the Court, granting bail to the petitioner.”

22. In the present case, we also find that the cases mentioned at serial no.23, 24, 25, 27, 28, 29, 31 and 32 are still pending trial. In the last four cases referred to above, evidence is yet to be recorded. Apprehension of the detaining authority that as the petitioner keeps a fire arm with him, people are afraid of deposing against him and, therefore, 'witnesses are likely to be intimidated by his presence outside jail', cannot be said to be an unfounded opinion.

23. We, thus, find that the present writ petition is completely devoid of any merit and, therefore, dismiss the same. No costs.

(A.K. SIKRI)
JUDGE

(AJIT BHARIHOKE)
JUDGE

JANUARY 25th, 2010.

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