

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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WRIT PETITION No.18559 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The order of detention of Sri Somu Ravi, S/o late Somu, is under challenge in this Writ Petition. The District Collector-cum-District Magistrate, Chittoor, by order dated 24.04.2015, recorded his satisfaction that the acts of the detenu were prejudicial to the maintenance of public order under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as Act 1/1986), and he should be detained in preventive custody. The order of detention also records that the detenu was remanded and was lodged in sub-jail, Tirupathi; after his release on bail he would go underground and continue his illegal activities; he does not have any respect towards law; and his activities cannot be controlled just by invoking the normal legal procedure. The grounds of detention refer to nine incidents. They are:

1. Sathyavedu PS Cr.No.112/2014 under Sections 353, 307, 109, 379 IPC r/w 34 IPC, Section 20(1) (c) (III) (IV) (X) of Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Section 30 of the Indian Arms Act, 1959.
2. Madanapalli Taluk PS Cr.No.168/2014 under Sections 353, 307, 109, 379 IPC r/w 34 IPC, Section 20 of Andhra Pradesh Forest Act, 1967, Section 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Section 30 of the Indian Arms Act, 1959.
3. Nindra PS Cr.No.42/2014 under Sections 307, 353, 379, 411 IPC r/w 34 IPC, Sections 29 and 32 of Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 29 of the Wild Life Protection Act, 1972, Sections 55 (2) and 58 of the Biological Diversity Act, 2002 and Section 27 (1) the Indian Arms Act, 1959.
4. Punganur PS Cr.No.186/2014 under Sections 353, 307, 109, 379 IPC r/w 34 IPC, Section 20(1)

(c) (III) (IV) (X) of Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Section 30 of the Indian Arms Act, 1959.

5. Karveli Nagar PS Cr.No.56/2014 under
Sections 353, 307, 109, 379 IPC r/w 34 IPC and Section 20(1) (c) (III) (IV) (X) of Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Section 30 of the Indian Arms Act, 1959.
6. Satyavedu PS, Cr.No.113/2014 under
Sections 353, 307, 109, 379 IPC r/w 34 IPC and Section 20(1) (c) (III) (IV) (X) of Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969 and Section 30 of the Indian Arms Act, 1959.
7. Bhakarapet PS, Cr.No.73/2014 under
Sections 109, 147, 148, 353, 341, 307 IPC r/w 149 IPC and 379 IPC, Section 20(1) (c) (III) (IV) (X) of Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969.
8. Puthalapattu PS, Cr.No.1345/2014 under Sections 307, 353, 379, 109 IPC, Sections 32 and 29 of the Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 29 of the Wild Life Protection Act, 1972, Sections 55(2) and 58 of the Biological Diversity Act, 2002 and Section 27 of the Indian Arms Act, 2002.
9. Renigunta U PS, Cr.No.12/2015 under
Sections 307, 353, 379, 120-B r/w 34 IPC and Section 20(1) (c) (III) (IV) (X) and Section 29 (II) (B) of the Andhra Pradesh Forest Act, 1967, Rule 3 of the Andhra Pradesh Sandal Wood and Red Sanders Wood Transit Rules, 1969, Section 51 of the Wild Life (Protection) Act, 1967 and Section 55(2) of the Biological Diversity Act.

The grounds of detention also refers to the fact that the Superintendent of Police, Urban Police Station, Tirupathi had requested that Mr.Somu Ravi be detained. However, in the grounds of detention, the detaining authority recorded his satisfaction that Sri Somu Ravi was required to be detained under Section 3 (1) r/w 3(2) of the Act as his activities were injurious to the maintenance of public peace and law and order.

Sri C.Hari Preeth, learned counsel for the petitioner, would question the order of detention on two grounds. Firstly that the detaining authority was confused as

to whether the detenu should be detained for acts prejudicial to the maintenance of public order or for activities prejudicial to public peace and law and order; while the order of detention refers to the need to detain the detenu for acts prejudicial to public order, the grounds of detention record that the activities of the detenu were injurious to the maintenance of public peace and law and order; it is only for acts prejudicial to public order, can a person be detained under A.P.Act 1/1986; and as the detaining authority has recorded his satisfaction, in the grounds of detention, that the activities of the detenu were injurious to the maintenance of public peace and law and order, the order of detention is liable to be set aside. Learned counsel would question the validity of the order of detention also on the ground that the detenu was enlarged on bail even prior to the passing of the detention order; and these bail orders were neither placed before the detaining authority nor was the detaining authority apprised by the Sponsoring Authority of the fact that the detenu had been granted bail.

The fact that the detenu was enlarged on bail in all the nine cases is denied in the counter-affidavit, and it is stated therein that the detenu was enlarged on bail in three out of the nine crimes i.e. in Cr.No.73 of 2014, 135 of 2014 and 186 of 2014; as on the date of the proposal by the Superintendent of Police dated 30.03.2015, no bail was granted to the detenu; and, as such, this information could not be placed before the detaining authority. It is evident, from the counter-affidavit itself, that, while the order of detention was passed on 24.04.2015, even according to the detaining authority bail was granted to the detenu prior thereto in three cases on 17.04.2015, 16.04.2015 and 22.04.2015 respectively. These bail orders were, admittedly, not placed before the detaining authority who was unaware of these orders when he passed the order of detention.

With regards failure of the Sponsoring Authority to place copies of the bail orders before the detaining authority, a Division Bench of this Court, in its order in W.P.No.6510 of 2015 & batch dated 29.09.2015, observed:-

“.....It is incumbent that all vital material are placed before the detaining authority to enable him to arrive at the subjective satisfaction as to the necessity for passing an order of detention.
(M. Ahamedkutty v. Union of India (1990) 2 SCC 1; State of U.P. v. Kamal Kishore Saini (1988) 1 SCC 287). The bail order is a vital material for consideration. If it is not considered, the satisfaction of

the detaining authority would be impaired. If it is considered, it would then be a document relied on by the detaining authority, though not specifically mentioned in the annexure to the order of detention, and ought to form part of the documents to be supplied to the detenu with the grounds of detention; and, without them, the grounds themselves cannot be said to have been complete. It amounts to denial of the detenu's right to make an effective representation, and would be in violation of Article 22(5) of the Constitution of India. It would render the continued detention of the detenu illegal and entitle him to be set at liberty. (**M. Ahamedkutty v. Union of India (1990) 2 SCC 1**). If the bail order, which is a vital material, is not considered, the satisfaction of the detaining authority itself would be impaired.

(**V. Muragesh v. Collector and District Magistrate, Chittoor (2013) Cri.L.J.585**; **Durgam Subramanyam v. Government of A.P. (2013) 4 ALT 243 (DB)**; **Kamal Kishore Saini (1988) 1 SCC 287**; **M. Ahamedkutty v. Union of India (1990) 2 SCC 1**). Non-placing and non-consideration of material, as vital as the bail order, vitiates the subjective decision of the detaining authority, and the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority. (**Rushikesh Tanaji Bhoite v. State of Maharashtra (2012) 2 SCC 72**). Failure of the sponsoring authority to place the conditional orders, granting anticipatory bail/bail, before the detaining authority is fatal as it is a vital material which would have weighed with the detaining authority at the time of passing the detention order. (**Durgam Subramanyam v. Government of A.P. (2013) 4 ALT 243 (DB)**). When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing 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. (**Vijay Narain Singh v. State of Bihar (AIR 1984 SC 1334)**; **Jotha Viswanadh v. Chief Secretary, Govt. of A.P. (judgment in W.P.No.10018 of 2012 dated 29.06.2012) (APHC) (D.B)**). Where the detenu is released on bail, and is enjoying his freedom under the order of the court, the order of bail must be placed before the detaining authority, when the order of detention is passed, to enable him to reach a proper satisfaction. (**Rushikesh Tanaji Bhoite v. State of Maharashtra, (2012) 2 SCC 72**). If the detaining authority was unaware of the order of bail, the detention order is rendered invalid as the Court cannot attempt to assess in what manner, and to what extent, consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority in passing the order of preventive detention. (**Rushikesh Tanaji Bhoite v. State of Maharashtra (2012) 2 SCC 72**) ; **Rekha v. State of Tamilnadu (2011) 5 SCC 244**; **Jotha Viswanadh v. Chief Secretary, Govt. of A.P. (judgment in W.P.No.10018 of 2012 dated 29.06.2012) (APHC)**). The question whether, on the date of passing the order of detention, the detenu was in custody or not is a relevant fact. It would also be a relevant fact whether he is free on that date and, if he is, whether he is subjected to certain conditions pursuant to, and in furtherance of, the order of bail. If pursuant to, or in furtherance of, such conditions he may not be able to flee from justice, that may be a relevant consideration in passing an order of detention. Other grounds, raised in the application for bail and forming the basis for passing an order of bail, may also be relevant. It would, however, not be correct to contend that, irrespective of the nature of

the application for bail or irrespective of the nature of the restrictions, if any, placed by the Court of competent jurisdiction, in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority, and copies thereof supplied to the detenu. (**Sunila Jain v. Union of India (2006) 3 SCC 321**). If, the detaining authority is not made aware, at the time the detention order was made, that the detenu had moved applications for bail, and he was enlarged on bail, it would indicate total absence of application of mind on the part of the detaining authority while passing the order of detention, as one does not know how the detaining authority would have acted if he was made aware of these details. (**Anant Sakharam Raut v. State of Maharashtra (1986) 4 SCC 771**). Non-consideration of the bail order would amount to non-application of mind as non-consideration of relevant and important material is fatal to the detention order. If the detaining authority had considered the order, it may have persuaded him to desist from passing the order of detention. (**M. Ahamedkutty v. Union of India (1990) 2 SCC 1**; **Union of India v. Manoharlal Narang (1987) 2 SCC 241**). In **S. Sathu v. Government of A.P., rep. by its Chief Secretary (2013) 3 ALT (Cri) 303 (D.B) (A.P)**), a Division bench of this Court held that the order of detention was vitiated on account of non-application of mind as the detaining authority had not considered the fact that the detenu had applied for bail in four cases, and was granted bail in the said four cases; the sponsoring authority did not place these order before the detaining authority; and this, being vital material, ought not to have been suppressed by the sponsoring authority. In **V. Muragesh v. Collector and District Magistrate, Chittoor (2013) Cri.L.J.585**, this Court held that it was evident that, from out of the eight forest offences registered against the detenu, he was arrested and released on bail in five cases, while in three cases, he was not even arrested; curiously, in the order of detention, the detaining authority had recorded that the detenu was released on bail in all the cases; this showed that the detaining authority, had not applied his mind to the facts of the case; the detaining authority did not even bother to refer to the details of the bail applications moved by the detenu nor to the details of the bail orders nor to the conditions on which bail was granted to the detenu; and he could not have recorded details of the bail applications moved by the detenu and the bail orders granted and the conditions on which the bail was granted, as they were not placed before him. The Learned Single judge, in **B. Venkata Ramana v. The Government of Andhra Pradesh (judgment in W.P.No.22820 of 2014 and batch dated 13.10.2014)**, following **Sunila Jain v. Union of India (2006) 3 SCC 321**, held that if the order of bail contains relevant information which, if considered by the detaining authority, he would have been satisfied that the ordinary course of law was adequate enough to deal with the detenu, and the power of preventive detention need not be invoked against him; in such cases the subjective satisfaction can be said to have been impaired; in the instant case, no such demonstration had been carried out to show that the bail order contained vital material, and as to how the order of bail would have made a difference in the matter of subjective satisfaction of the detaining authority; and the detention order was not vitiated for want of knowledge of granting bail by the criminal court to the detenu. On the other hand, in **Gajjala Subba Reddy v. The Collector and District Magistrate, Kadapa (judgment in W.P.No.3917 of 2013 dated 26.03.2013)**, the Learned

Single Judge considered the judgment of the Supreme Court in **Sunila Jain v. Union of India (2006) 3 SCC 321**, and held that, in the present case, the bail applications filed by the detenu in the five cases specifically stated that he was implicated therein on the basis of confessions allegedly made by co-accused which were inadmissible in law, no red sander logs were found in his possession, and cases were foisted on him at the instance of his enemies; these facts would be relevant and material to decide whether the detaining authority should pass an order of preventive detention against the detenu, and cannot be said to be irrelevant; the order of detention or the grounds of detention made no reference to the fact that the detenu had applied for bail in five cases, and was granted bail therein; although a plea was taken, in the counter affidavit filed by the detaining authority, that the bail applications and the bail orders were placed before him, he had perused the same, and had then passed the order of detention, this was not reflected in the grounds of detention supplied to the detenu or in the order of detention; it was clear that the detaining authority had not considered the fact that the detenu had applied for bail in the five cases, and had secured bail, before passing the order of detention; the order of detention was vitiated on account of non-application of mind as the detaining authority did not consider the vital fact that the detenu had applied for bail in five cases and was also granted bail in all the said five cases; and a similar view was also taken in **Durgam Subramanyam v. Government of A.P. (2013) 4 ALT 243 (DB)** and in **V. Muragesh v. Collector and District Magistrate, Chittoor (2013) CrI.L.J.585**. In **Saroj Mehandi v. The Government of A.P. rep. by its Chief Secretary, Hyderabad (common order in W.P.No.32710 of 2014 and batch dated 02.03.2015)**, a learned single judge of this Court held that, in **Sunila Jain v. Union of India (2006) 3 SCC 321**, the detaining authority was aware of the orders under which the detenu was released on bail, and failure to place the bail applications before the detaining authority was held not to vitiate the subjective satisfaction; placing of a bail application, and the bail order before the detaining authority, are two different and distinct aspects; and, as the orders granting bail was within the knowledge of the detaining authority, the Supreme Court, in **Sunila Jain v. Union of India (2006) 3 SCC 321**, had held that absence of the bail applications, being placed before the detaining authority, would not vitiate the detention order; it was imperative for the detaining authority to be apprised of the fact that the detenu was released on bail in more than one crime listed in the grounds as that would, inter alia, lead to an inference that a competent criminal court has chosen to enlarge on bail rather than holding the detenu in custody. In view of the conflicting opinions expressed by the Learned Single judges in the aforesaid judgments, placing reliance on the judgment of the Supreme Court in **Sunila Jain v. Union of India (2006) 3 SCC 321**, it is necessary to consider the law declared by the Supreme Court in **Sunila Jain v. Union of India (2006) 3 SCC 321**. In **Sunila Jain v. Union of India (2006) 3 SCC 321**, the Supreme Court held that **M. Ahamedkutty v. Union of India (1990) 2 SCC 1** was a case where an order of bail was passed on the condition that the detenu would report before the Customs Authority every Wednesday, and would not change his residence without prior permission of the Court; in the aforementioned fact situation, the Supreme Court had opined that non-consideration of the order, passed on the said petition for bail,

amounted to non-application of mind on the part of the detaining authority; the said decision had no application to the present case; on the petitioner's own showing, only that part of the application for grant of bail, that the offence in question was bailable, was relevant; whether a provision of law is bailable or not is a question of law; the same is presumed to be known to the courts and/or the detaining authority; it may not be necessary even to be stated in the application for bail; if a person had been released on bail on the ground that the offence is bailable, it would not be necessary to bring the said fact before the detaining authority; in the instant case the order of detention had taken note of the fact that the detenu had already been released on bail; it was also not in dispute that a copy of the order granting bail, and the order of remand, had been furnished to the detenu; in this view of the matter, non-furnishing of a copy of the application for bail could not be said to be a relevant fact which was required to be taken into consideration by the detaining authority; all the documents placed before the detaining authority are not required to be supplied; and only relevant and vital documents are required to be supplied. Unlike in **Sunila Jain v. Union of India (2006) 3 SCC 321** where a copy of bail application, for an offence which was bailable, was not furnished and a copy of the order granting bail and the order of the remand were furnished to the detenu, in the present case the orders granting conditional/ conditional bail were neither considered by the detaining authority nor were copies thereof furnished to the detenu. The conditional orders of bail restricted the movement of the detenus and required them to appear before the officer concerned periodically. If these conditional orders of bail had been brought to his notice, it may well have resulted in the detaining authority arriving at the subjective satisfaction that the detention of the detenus were unnecessary. Reliance placed by the Learned Advocate-General on **Sunila Jain v. Union of India (2006) 3 SCC 321** is, therefore, misplaced. Neither the order nor the grounds of detention refer either to the conditional or the unconditional orders of bail granted in favour of the detenus. As noted hereinabove failure of the detaining authority to consider the orders granting conditional bail would vitiate the orders of detention.....”

As the detaining authority failed to consider the orders, whereby bail was granted to the detenu, the order of detention stands vitiated thereby.

A similar situation, where the detaining authority recorded, in the order of detention, that the activities of the detenu were prejudicial to public order, but in the order of detention recorded that the activities of the detenu were prejudicial to public peace and law and order, arose for consideration before a Division Bench of this Court, in W.P.No.6510 of 2015 and batch dated 29.09.2015, wherein it was held:-

“.....While the order of detention passed by the District Collector

and District Magistrate, Chittoor dated 09.02.2015, records his satisfaction that the acts of the detenu were prejudicial to the maintenance of public order and the grounds of detention, at several places, refer to the fact that the activities of the delinquent were prejudicial to the maintenance of public order, the satisfaction of the detaining authority, as recorded in the concluding part of the grounds of detention, is that the detenu should be detained under Section 3(1) read with Section 3(2) of A.P. Act 1 of 1986, as his activities were injurious to the maintenance of “**public peace and law and order**”. In W.P. No.8289 of 2015, it is stated that the detaining authority had recorded his satisfaction, basing on four crimes registered against the detenu, that his activities were adversely affecting “**public peace and law and order**”; the detaining authority can invoke the provisions of Act 1 of 1986 only if the activities of the detenu are prejudicial to the maintenance of “**public order**”; and violation of “**law and order**” is not a ground for detention under A.P. Act 1 of 1986. While the order of detention passed by the District Collector and District Magistrate, Chittoor dated 09.02.2015, records his satisfaction that the acts of the detenu were prejudicial to the maintenance of public order, and the grounds of detention at several places refer to the fact that the activities of the delinquent were prejudicial to the maintenance of “**public order**”, the satisfaction recorded in the concluding part of the grounds of detention is that the detenu should be detained, under Section 3(1) read with Section 3(2) of A.P. Act 1 of 1986, as his activities were injurious to the maintenance of “**public peace**” and “**law and order**”. It is contended, on behalf of the petitioners, that A.P. Act 1 of 1986 can only be invoked if the activities of the detenu are prejudicial to “**public order**”; detention, on the ground that activities of the detenu are prejudicial to “**law and order**”, is impermissible under the 1986 Act; the detaining authority has used both the expressions – “**law and order**” and “**public order**” – in recording his satisfaction; the satisfaction of the detaining authority, on the ground that the activities of the detenu are prejudicial to “**public peace**” and “**law and order**”, are irrelevant factors, the use of which reveal non-application of mind and vitiate the orders of detention; the order of detention is akin to a decree, and the grounds of detention are akin to a judgment; on the basis of the material furnished by the sponsoring authority, and after perusing the file and analysing the material placed before him, the detaining authority decides whether or not the concerned person should be detained; such a reference forms the basis of the satisfaction arrived at by the detaining authority to detain the detenu in preventive custody; the very fact that the detaining authority referred to “**public order**” in the Order of detention, and “**public peace**” and “**law and order**” in the grounds of detention reflects his confused state of mind; he was not sure of the reason for detaining the detenu; he was swayed by irrelevant considerations which vitiated the order of detention; and reference to “**public peace**” and “**law and order**” in the grounds of detention vitiates the order of detention also. Learned Advocate-General for the State of Andhra Pradesh, would submit that the order of detention states that the activities of the detenu are prejudicial to “**public order**”; even, in several parts of the grounds of detention, reference is made only to “**public order**”; an isolated reference to “**public peace**” and “**law and order**”, in the concluding part of the grounds of detention, would not vitiate the order of detention; and both the order and the grounds of detention should be read together. The meaning of the words “**maintenance of public**

order", in the context of special laws entailing detention of persons without a trial on the pure subjective determination of the Executive, is confined to graver episodes not involving cases of "**law and order**", which are not disturbances of public tranquillity but of *ordre publique*. (**Madhu Limaye v. Sub-Divisional Magistrate (1970) 3 SCC 746**). "**Public order**" is synonymous with public safety and tranquillity. Public order, if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. 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. (**Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740; Commissioner of Police v. C. Anita (2004) 7 SCC 467**). "Public order" 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 tranquillity of the society undisturbed? (**Commissioner of Police v. C. Anita (2004) 7 SCC 467; Kanu Biswas v. State of W.B. (1972) 3 SCC 831**). The expression "**law and order**" is wider in scope, as contravention of the law always affects order. "**Public order**" has a narrower ambit, and public order would 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 degree, and the extent of the reach of the act in question on society. 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 only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is in its impact on society, it may be very different. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention, in its effect, is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problems 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". (**Commissioner of Police v. C. Anita (2004) 7 SCC 467**). The State is at the centre and society surrounds it. The acts become graver as we journey from the periphery of the largest circle towards the centre. (**Madhu Limaye v. Sub-Divisional Magistrate (1970) 3 SCC 746**). For expounding the phrase "**maintenance of public order**", one has to imagine three concentric circles : Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents the Security of the State. All cases of disturbances of public tranquillity fall in the largest circle but some of them are outside "**public order**" for the purpose of the phrase "**maintenance of public order**", similarly every breach of public order is not necessarily a case of an act likely to endanger the security of the State. ((**Ram Manohar Lohia v. State of Bihar (AIR**

1966 SC 740; Madhu Limaye v. Sub-Divisional Magistrate (1970) 3 SCC 746). Every infraction of the 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. (**Commissioner of Police v. C. Anita (2004) 7 SCC 467; Kishori Mohan Bera v. State of W.B. (1972) 3 SCC 845; Pushkar Mukherjee v. State of W.B. (1969) 1 SCC 10; Arun Ghosh v. State of W.B.(1970) 1 SCC 98**) and **Nagendra Nath Mondal v. State of W.B. (1972) 1 SCC 498**). Stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound, in some measure, to lead to disorder but every infraction of the law does not necessarily result in public disorder. “**Law and order**” comprehends disorders of less gravity than those affecting “**public order**” just as “**public order**” comprehends disorders of less gravity than those affecting “**Security of State**”. (**Commissioner of Police v. C. Anita (2004) 7 SCC 467; Kuso Sah v. State of Bihar (1974) 1 SCC 185; Harpreet Kaur v. State of Maharashtra (1992) 2 SCC 177; T.K. Gopal v. State of Karnataka (2000) 6 SCC 168 and State of Maharashtra v. Mohd. Yakub (1980) 3 SCC 57**). In **Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740)** the Supreme Court held that the action of the District Magistrate was entirely his own; he was, no doubt, facing a law and order problem, but he could deal with such a problem through the ordinary law of the land, and not by means of preventive detention; his powers were limited to taking action to maintain public order; he could not run the law and order problems in his District by taking recourse to the provisions for detention under the preventive detention laws; if he thought in terms of “public order”, he should have said so in the order or explained how the error arose; he did neither; and if the needs of public order demanded action a proper order should have been passed. In

V. Muthuvelu v. State of A.P (judgment in W.P.No.8022 of 2015 dated 22.09.2015), a Division Bench of this Court held that the meaning and interpretation of “maintenance of public order” and “law and order” had fallen for scrutiny before the Supreme Court in **Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740)**; in the said judgment, the Supreme Court had held that “public order” and “law and order” are not the same; ‘law and order’ comprehends disorders of lesser gravity than those affecting ‘public order’; Courts cannot inquire into grounds of satisfaction and, similarly, the State also cannot prove the legality of the order, except on the terms as contained in such order; the aforesaid ratio laid down by the Supreme Court supported the contention that, if the order of detention is passed by the detaining authority on the ground that the activities of detenu are prejudicial to the interest of not only public order but also law and order, it would amount to widening the scope of the very provision; in **Smt. Godavari Shamrao Parulekar v. The State of Maharashtra (AIR 1964 SC 1128)**, the Supreme Court held that when an order is

passed, using different expressions at different places, the satisfaction arrived at, by reading the order as a whole, is to be given effect to; but, in view of the subsequent judgment of the Supreme Court in **Ram Manohar Lohia v. State of Bihar (AIR 1966 SC 740)**, this contention could not be accepted; it was also clear from the concluding portion of the order that the subjective satisfaction of the detaining authority was arrived at only on the premise that the activities of the detenu were not only prejudicial to the interest of public order, but was also prejudicial to the interest of law and order; the other portions of the order, where the sponsoring authority's proposals were referred to, used the expression 'public order'; and that would not outweigh the concluding portion where the detaining authority arrived at the subjective satisfaction that an order of detention should be passed on the ground that the activities of the detenu were also prejudicial to law and order. The detaining authority cannot wish away the fact that, in the grounds of detention, he has recorded his satisfaction of the need to detain the detenus as he apprehended their activities to be injurious to "**public peace**" and "**law and order**" neither of which are grounds for detaining a citizen, in preventive custody, under A.P. Act 1 of 1986. Even if the order and the grounds of detention are read together, the fact that the detaining authority has recorded his satisfaction in the Orders of detention on grounds of "**public order**", and in the grounds of detention, as affecting "**public peace**" and "**law and order**", reflect his confused state of mind, and lack of clarity of thought in satisfying himself whether the detention should be on grounds of "**public order**" or "**public peace and law and order**". As noted hereinabove, "**public order**" has acquired a meaning distinct from "**law and order**" and, as the detaining authority is not empowered to detain citizens on grounds that their activities are injurious to "**public peace and law and order**", his subjective satisfaction is based on extraneous and irrelevant considerations invalidating the orders of detention".

As noted hereinabove, in its order in W.P.No.6510 of 2015 and batch dated 29.09.2015, the Division Bench observed that, as the detaining authority was not empowered to detain citizens on grounds that their activities were injurious to public peace and law and order, his subjective satisfaction was based on extraneous and irrelevant considerations, invalidating the orders of detention.

On both these grounds, the order of detention is liable to be and is, accordingly, set aside. The detenu shall be set at liberty forthwith provided he is not required to be kept in custody in any other case registered against him.

The Writ Petition is allowed. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

12th October, 2015.

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