

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**WRIT PETITION No.17974 of 2015**

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

The relief sought for in this Writ Petition is for a writ of *Habeas Corpus* directing the respondents to produce the *detenu* (the husband of the petitioner) i.e. Sri Durgam Subrahmanyam Takku Subrahmanyam, S/o Gangi Setti, who is presently lodged in Central Prison, Kadapa, YSR Kadapa District before this Court; to declare that the order of detention, passed vide proceedings dated 27.05.2015, as approved by the State Government vide G.O.Rt.No.1706 dated 05.06.2015, and confirmed by the State Government by G.O.Rt.No.2200 dated 16.07.2015, as illegal, void and violative of Article 21 of the Constitution of India.

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The petitioner herein is the wife of the *detenu*. The petitioner's husband was arrested on 05.04.2015 in Cr.No.72 of 2014 of Chittoor II Town Police Station, and was remanded to judicial custody. The order of detention dated 27.05.2015 was served on him while he was in jail. The *detenu* was detained under Section 3 of the Andhra Pradesh Prevention of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter called 'Act 1 of 1986') on the ground that his activities were prejudicial to the maintenance of public order as he was indulging in smuggling Red Sanders in and around Chittoor District. The order of detention dated 27.05.2015 was approved by the State Government on 05.06.2015 and, after the *detenu* was produced before the Advisory Board, an order of confirmation was passed by the State Government on 16.07.2015 detaining the *detenu* for a period of twelve months from the date of detention.

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Sri P.Gangiah Naidu, learned Senior Counsel appearing on behalf of the petitioner, would question the order of detention on two grounds. Firstly that, while the order of detention records the satisfaction of the detaining authority that the *detenu* is required to be detained as his activities are prejudicial to the maintenance of public order, the grounds of

detention record the satisfaction of the detaining authority that the *detenu* is required to be detained as his activities are injurious to the maintenance of public peace and law and order; neither public peace nor the law and order are grounds for detention under the Act 1 of 1986; and, as the detaining authority was swayed by irrelevant considerations, the order of detention is liable to be set aside. The second ground of challenge to the order of detention is that, while the *detenu* was released on bail, in five of the six cases referred to in the grounds of detention, the sponsoring authority had not informed the detaining authority of the fact that the *detenu* had already been enlarged on bail in five of the six crimes; and, as the order of detention was passed in ignorance of this relevant fact, it is vitiated thereby.

It is contended, on behalf of the petitioner, that 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**<sup>[1]</sup>). “**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. The State of Bihar**<sup>[2]</sup>; **Commissioner of Police v. C. Anita**<sup>[3]</sup>). “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? (**C. Anita**<sup>3</sup>; **Kanu Biswas v. State of W.B.**<sup>[4]</sup>).

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”. (C. Anita<sup>3</sup>).

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<sup>1</sup>). 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<sup>2</sup>; Madhu Limaye<sup>1</sup>).

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.

(**C. Anita**<sup>3</sup>; **Kishori Mohan Bera v. State of W.B.**<sup>[5]</sup>; **Pushkar Mukherjee v. State of W.B.**<sup>[6]</sup>; **Arun Ghosh v. State of W.B.**<sup>[7]</sup> and **Nagendra Nath Mondal v. State of W.B.**<sup>[8]</sup>). 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**”. (**C. Anita**<sup>3</sup>; **Kuso Sah v. State of Bihar**<sup>[9]</sup>; **Harpreet Kaur v. State of Maharashtra**<sup>[10]</sup>; **T.K. Gopal v. State of Karnataka**<sup>[11]</sup> and **State of Maharashtra v. Mohd. Yakub**<sup>[12]</sup>).

In **Ram Manohar Lohia**<sup>2</sup> 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.

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 *detenu* 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.

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As we are satisfied that the order of detention must be set aside on this ground alone, it is unnecessary for us to examine whether the order of detention is vitiated by non-consideration of the fact that the *detenu* was released on bail in five of the six crimes referred to in the grounds of detention.

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On this short ground, the impugned order of detention must be, and is hereby, set aside. The *detenu* shall be set at liberty forthwith provided he is not required to be kept in custody in any other case/cases registered against him.

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

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**RAMESH RANGANATHAN, J**

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**M. SATYANARAYANA MURTHY, J**

22<sup>nd</sup> December, 2015

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- [\[1\]](#) (1970) 3 SCC 746
- [\[2\]](#) AIR 1966 SC 740
- [\[3\]](#) (2004) 7 SCC 467
- [\[4\]](#) (1972) 3 SCC 831
- [\[5\]](#) (1972) 3 SCC 845
- [\[6\]](#) (1969) 1 SCC 10
- [\[7\]](#) (1970) 1 SCC 98
- [\[8\]](#) (1972) 1 SCC 498
- [\[9\]](#) (1974) 1 SCC 185
- [\[10\]](#) (1992) 2 SCC 177
- [\[11\]](#) (2000) 6 SCC 168
- [\[12\]](#) (1980) 3 SCC 57