

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

THE HON'BLE MRS. JUSTICE ANIS

+ WRIT PETITION No.5168 of 2015

% 28-09-2015

Smt. Israth BegumPetitioner

And

\$ The State of Telangana and another Respondents

! Counsel for the Petitioner : Sri G.L. Narasimha Rao

[^] Counsel for the Respondents : Sri H.Venu Gopal

G.P. for Home (TS)

<Gist :

>Head Note:

? Cases referred:

1. 2014 (7) SCJ 707
2. AIR 1992 SC 979
3. AIR 1992 SC 979
4. AIR 1958 SC 163
5. AIR 1972 Supreme Court 1749
6. AIR 1966 SC 740
7. AIR 1975 Supreme Court 1215
8. (2012) 4 Supreme Court Cases 699
9. (1972) 1 Supreme Court Cases 199
10. AIR 1966 SC 740
11. (1970) 3 SCC 746
12. (1972) 3 SCC 831
13. AIR 1958 SC 163
14. AIR 1970 Supreme Court 1228
15. (2008) 3 SCC 613
16. (1975) 3 SCC 198
17. 2015 (1) ALD (Crl) 987

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION NO.5168 OF 2015

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ORDER: (*Per Hon'ble Justice Nooty Ramamohana Rao*)

This writ petition is directed against the order of preventive detention passed by the Commissioner of Police, Hyderabad City, exercising the power available to him under Subsection 2 of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (henceforth for brevity referred to as 'Act'). The Commissioner of Police has passed the order of preventive detention on 30.09.2014. The grounds of detention have also been drawn on the same day and furnished to the detenue. In the grounds of detention, while adverting to the past conduct of the detenue, mention was made about the Criminal cases which have been booked against him in the past. The first one related to Crime No.431 of 2013 which was booked by the Jubilee Hills Police Station relating to an offence allegedly committed on 01.09.2013, based upon a complaint which has set out that at about 02.00 hrs in the night while the complainant was coming from Vasavi Hospital, Lakadikapool area, the detenue and his associates assembled at Hanuman Temple, Sriramnagar and caused obstruction to the car of the complainant. When he has blown horn of the car, a quarrel has been picked up by the detenue and the detenue and his associates assaulted the complainant and his brother who is accompanying in the car, which resulted in a fracture of the left hand of the brother of the complainant. Though the detenue was arrested in connection with this crime, he was accorded bail by the Criminal Court. The second related to the crime which is

registered by the same Jubilee Hills Police Station in Crime No.510 of 2013. On the intervening night of 12th/13th October, 2013, the accused and his associates obstructed the son of the complainant and his friend on the pretext of finding an address. When the son of the complainant answered that he does not know that particular address, the detenue abused them in filthy language and then beat him with a stick, causing bleeding injuries and the son of the complainant has got to be admitted immediately to a local nursing home. The third complaint related to picking up a quarrel by the detenue with the complainant for not attending to Milad-Un-Nabi procession at Yousufguda on 27.01.2014. The fourth crime related to an offence said to have taken place in the intervening night of 18th/19th February, 2014 at 02:30 hrs in the morning, where, it was alleged that the detenue and his associates have attacked the father of the complainant, who is sleeping at the residence, armed with iron rods and caused bleeding injuries. The next incident relates to stealing of a two wheeler by the detenue which was parked opposite to a bar and restaurant at Venkatagiri. The next crime related to damage caused to a motor car which was allegedly parked by the side of the house of the detenue. The next crime related to the complaint lodged by an 18 year old student who has been harassed by the detenue for the past several days for not wishing him as soon as he was seen in the locality and that on 12.08.2014, the detenue assaulted him with a belt causing blunt injuries over his back. Therefore, the Commissioner of Police had arrived at a subjective satisfaction that the detenue was indulging in dangerous activities and hence, he deserves to be detained to prevent him from indulging in from further such activities. The mother of the detenue appears to have submitted a representation seeking release of the detenue which was rejected by the Government on 08.02.2015. That is how the writ petition came to be instituted.

With a view to prevent the Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers indulging in dangerous activities prejudicial to the maintenance of Public Order, the State Legislature enacted the Act. Section 2 (g) defined the expression Goonda in the following words.

“goonda’ means 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 or Chapter XVII or Chapter XXII of the Indian Penal Code.”

The expression 'Goonda', therefore, attracts men who either by themselves or as a member of a Gang or leader of a Gang habitually commit or abet the commission of offences under Chapter XVI or XVII or Chapter XXII of Indian Penal Code (hereinafter for short referred to as 'IPC').

Chapter XVI of the IPC dealt with various offences affecting the human body and the punishment to be provided therefor. Chapter XVII IPC provided for various offences against property and the punishment for such offences, while Chapter XXII IPC dealt with the offences relating to criminal intimidation, insult, annoyance and the punishment therefor. If one were to go by the detention order, the Commissioner of Police has clearly brought out the activities indulged in regularly by the detainee, which make him fall within the meaning of "Goonda" as defined in the Act. The basis for forming subjective satisfaction by the Commissioner of Police has been indicated that the detainee was committing one offence or the other contained in Chapter XVII of IPC repeatedly and hence he has formed the opinion that the detainee was habitually committing or abetting the commission of such offences.

Learned counsel for the petitioner Sri G.L. Narasimha Rao had raised several contentions in support of his plea that the subjective satisfaction arrived at by the detaining authority does not have a credible basis or material. There was delay in disposing the representation for release. He has also placed heavy reliance upon the judgment rendered by the Supreme Court in ***Cherukuri Mani vs. The Chief Secretary, Government of Andhra Pradesh***, in support of the plea that the order of detention is vitiated for having detained the detainee for a period of more than 3 months.

We would like to advert to this last contention first. In the judgment rendered by the Supreme Court in Cherukuri Mani's case, the following two paragraphs have brought out the essence therein.

"13. Proviso to Sub-section (2) of Section [3](#) is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, exceeding three months, at a time. It means that, **if the Government intends to detain an individual under the Act for the maximum period of**

12 months, there must be an initial order of detention for a period of three months, and at least, three orders of extension for a period not exceeding three months each. The expression "extend such period from time to time by any period not exceeding three months at any one time" assumes significance in this regard."

While, Subsection 1 of Section 3 conferred power on the State Government, to detain preventively any person who is indulging in dangerous activities, but however, such power was also delegated to be exercised by the Commissioner of Police or the District Magistrate, as the case be, under sub-section 2 thereof. Hence, the commissioner of Police is no doubt discharging the functions as a delegate of the State Government. The proviso added thereunder would set out that the period has to be reviewed after three months. It is therefore contended by Sri Narasimha Rao that the period of authorization accorded to a delegate of detention that can be passed by the Commissioner of Police cannot be period exceeding three months.

We are not at all impressed by this contention. The maximum period for which one can be preventively detained has been prescribed under Section 13 of the Act as 12 months. Where an order of preventive detention is passed by the authority mentioned under Subsection 2, such an order is required to be considered by the State Government and it has to be approved by it within 12 days time of its passing. Once it approves the order of preventive detention, then the entire material has to be placed before the Advisory Board. The Advisory Board, then, is required to consider the material and the representation, if any, made by or on behalf of the detainee and pass an order either confirming the adequacy of the material or negating the claim. In the instant case, only after the Advisory Board tendered its opinion, the State Government confirmed the order of detention declaring that it will be valid for a period of one year from the date of detention. The provision contained under Subsection 2 of Section 3 of the Act therefore clearly not intended for prescribing the initial period of detention to be three months and it is only intended for purposes of enabling the delegation to the competent authority to exercise its power.

The purpose intended to be achieved in this regard is very clear. Only the State Government can pass an order of preventive detention. However, if certain prevailing circumstances in a locality or area warrant, exercise of similar power by Commissioner of Police or the District Magistrate, then the authorization in favour of

such officers cannot be granted for an indefinite period but must be restricted to a reasonable period. Hence, three months time is provided for reviewing such delegation/authorization.

In this context, it will be useful to refer to a judgment of the Supreme Court rendered in ***Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another*** wherein, a similar contention has been canvassed before the Supreme Court based upon the contours of a similar provision contained in Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Act, 1981. The provision contained in Maharashtra State Act is appropriate to be compared with the provision contained in Andhra Pradesh State Act.

Section 3 of Andhra Pradesh State Act	Section 3 of Maharashtra State Act

Section 3 - Power to make orders detaining certain persons(1) The Government may, if satisfied with respect to any boot-legger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :Provided that the period specified in the order made be the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time. (3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.	Section 3 - Power to make orders detaining certain persons (1) The State Government may, 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, it is necessary so to do, make an order directing that such person is detained. (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in Sub-section (1), exercise the powers conferred by the said Sub-section:Provided that the period specified in the order made by the State Government under this Sub-section shall not, in the first instance, exceed three months but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.(3) When any order is made under this section by an officer mentioned in Sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless in the meantime, it has been approved by the State Government.
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And thereafter, the Supreme Court has answered the contention in the following manner:

“31. Coming now to the second argument of Dr. Chitale to the effect that proviso to Section 3(2) of the Act, prohibited the State Government to make an order of detention in the first instance, exceeding three months, and since the order of detention in the

instant case had been made for a period exceeding three months, it was vitiated.

33. A plain reading of the Section shows that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by Sub-Section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in Sub-section (1), exercise the powers of the State Government as conferred by Sub-Section (1). The proviso to Sub-Section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under Sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under Sub-Section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails."

Unfortunately, the earlier judgment rendered by the Supreme Court in **Mrs. Harpreet Kaur Harvinder Singh Bedi**

Vs. State of Maharashtra and another has not been adverted to or noticed by the Supreme Court in Cherukuri Mani's case. A provision which is paramateria, identical to the one of the present act is what has been considered by the Supreme Court in Harpreet Kaur's case and a similar contention has been negated. In fact, the Constitution Bench of the Supreme Court earlier thereto in **Puranlal Lakhanpal vs**

Union of India has also considered a similar provision and arrived at a conclusion.

Therefore, it is only appropriate that the earlier judgment rendered by the Supreme Court in Harpreet Kaur's case is required to be followed instead of the view expressed in Cherukuri Mani's case.

The activities indulged in by the detainee clearly mark a distinct feature contained therein. He is trying to take recourse to crime in the wee hours of the night, so that, people would get shocked of such activities. The society at large should get scared of him. The even tempo of the society is sought to be completely disturbed and hence, we do not find any justifiable reason to interdict the order of preventive detention passed by the Commissioner of Police, Hyderabad City.

It would be profitable and appropriate to bear-in-mind some of the important principles of law relating to preventive detention.

In “***Kishori Mohan Bera v. The State of West Bengal*** ” the Supreme Court has put it beyond any pale of doubt that a law relating to preventive detention has to be strictly construed and consequently the power conferred by such law has to be exercised with extreme care and scrupulously within the bounds laid down in such a law.

In “***Dr. Lohia v. State of Bihar***” the Supreme Court held that the expression “public order” did not take in every infraction of law and that every disturbance of law and order leading to disorder would not be sufficient to invoke the extraordinary power under a preventive detention law.

In “***Jatindra Nath Biswas v. The State of West Bengal***” it was pointed out by the Supreme Court that even, if one ground, instead of several, is found to vitiate the subjective satisfaction of the detaining authority, the order of detention shall fall to ground.

In “***Subramanian v. State of Tamil Nadu and another***” the principles have been spelt out by the Supreme Court in paragraph No.14 in the following words:

“It is well settled that the court does not interfere with the subjective satisfaction reached by the Detaining Authority except in exceptional and extremely limited grounds. The court cannot substitute its own opinion for that of the Detaining Authority when the grounds of

detention are precise, pertinent, proximate and relevant, that sufficiency of grounds is not for the Court but for the Detaining Authority for the formation of subjective satisfaction that the detention of a person with a view to preventing him from acting in any manner prejudicial to public order is required and that such satisfaction is subjective and not objective. The object of the law of preventive detention is not punitive but only preventive and further that the action of the executive in detaining a person being only precautionary, normally, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner. The satisfaction of the Detaining Authority, therefore, is considered to be of primary importance with certain latitude in the exercise of its discretion.”

When a plea was raised before the Supreme Court in “**State of West Bengal v. Ashok Dey and others**” that in the absence of a law made by Parliament in terms of Clause 7 of Article 22 of our Constitution, no order of detention can be made for a longer period than 3 months, it was answered as under by Justice I.D. Dua, speaking on behalf of a larger Bench, in the following manner:

“7.The power of the State Legislatures under Article 246 with respect to preventive detention enumerated in Entry 3 of List III is co-extensive with that of Parliament with respect to such preventive detention and it must necessarily extend to all incidental matters connected with preventive detention as contemplated by this entry, subject only to the condition that it does not come into conflict with a law made by Parliament with respect to the same matter. There is no provision of the Constitution to which our attention has been drawn nor has any principle of law or precedent been brought to our notice, which would justify a limitation on the power of the State Legislature, as suggested by the respondent, to make a valid law providing for detention under Article 22(4) for a period beyond three months on the ground of absence of a law made by Parliament permitting detention for such period. Had the Constitution intended such a result it would certainly have made an express provision to that effect. Since Article 22 covers the subject of preventive detention both under the law made by Parliament and that made by State Legislatures, if State Legislatures were intended by the Constitution to function under a limitation in respect of the period of detention one would have expected to find such a limitation expressly stated in this Article. But as we read Clause (7) of Article

22 it merely invests the Parliament with an overriding power enabling it, if the circumstances so require, to make a law, providing for preventive detention prescribing the circumstances under which a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board and, also, prescribing the maximum period for which any person may be detained under any such law and further prescribing the procedure to be followed by an Advisory Board. It does not prohibit the State Legislature from making a law either providing for preventive detention for a longer period than three months when there is a provision for securing the opinion of an Advisory Board or prescribing procedure to be followed by such Advisory Board. Such a power with the State Legislature, hedged in by effective safeguards as it is, appears to us to be necessary to enable it to deal with emergent situations necessitating enactments with respect to preventive detention for safeguarding the security of the State against violent activities secretly organised by antisocial and subversive elements with the intention of producing chaos. Security of a State, maintenance of public order and of supplies and services essential to the community demand effective safeguards in the larger interest of sustenance of peaceful democratic way of life. Article 22, therefore, must be construed on its plain language consistently with the basic requirement of preventing anti-social subversive elements from imperiling the security of States or the maintenance of public order or of essential supplies and services therein.”

In “**Ram Manohar Lohia v. State of Bihar**” it was pointed out by the Supreme Court in the following manner:

“51.The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(l)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.”

A Seven Judge Constitution bench of the Supreme Court in “**Madhu Limaye v. Sub-Divisional Magistrate**” again dealt with the question and it was observed as under:

“In our judgment the expression ‘in the interest of public order’ in the Constitution is capable of taking within itself not only those acts which disturb the security of the State or act within ordre publique as

described but also certain acts which disturb public tranquillity or are breaches of the peace. It is not necessary to give the expression a narrow meaning because, as has been observed, the expression 'in the interest of public order' is very wide."

In "***Kanu Biswas v. State of West Bengal***" the Supreme Court opined:

"The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of society undisturbed?"

In "***Puranlal Lakhanpal v. Union of India***" the Supreme Court held in the following manner:

"7. Now, the point taken by the appellant is this. According to him, the expression 'such detention' occurring in sub-clause (a) of clause (4) of Art. 22 refers not merely to the original order of preventive detention but to the detention of a person for a period longer than three months; therefore, the Advisory Board when it makes its report is required under the sub-clause to record its opinion that there is sufficient cause not merely for the original order of detention but also for detention of that person for a period longer than three months.....

15. Clause (7) of Art. 22 is an exception to clause (4) of that Article. It authorises Parliament alone to pass a law of preventive detention authorising detention of a person for more than three months without obtaining the opinion of an Advisory Board so long as the circumstances under which and the class or classes of cases in which a person may be detained for a longer period than for three months are set out in the enacted law. The Constitution evidently does not contemplate detention of the person for a period of three months or less as sufficiently serious to have the safeguard of a report by an Advisory Board to the effect that there is sufficient cause for detention...."

What then is the scheme of the Act under our consideration? An order of detention is made under S. 3 of the Act. If the order is made by any officer under sub-s. (2) of S. 3, a report has to be submitted to the State Government to which the officer is subordinate and the

order does not remain in force for more than twelve days unless in the meantime it has been approved by the State Government. Under S. 7 of the Act, the grounds of detention have to be communicated to the detenu, as soon as may be but not later than five days from the date of detention. S. 8 relates to the constitution of an Advisory Board. Under S. 9 in every case where a detention order has been made under the Act; the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the detenu. Section 10 prescribes the procedure of the Advisory Board and lays down that the Advisory Board must submit its report to the appropriate Government within ten weeks from the date of detention. Sub-section (2) of S. 10 states that the report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned. Then comes S. 11 which we have already quoted in extenso. The scheme of the Act has been explained in several decisions of this Court. In *Makhan Singh Tarsikka v. State of Punjab*, 1952 SCR 368 at p. 370: (AIR 1952 SC 27 at p. 28) (B), it was stated that whatever might be the position under the Preventive Detention Act of 1950 before it was amended in 1951, under the Act as amended in 1951, the Government must determine what the period of detention should be only after the Advisory Board to which the case is referred reports that the detention is justified. Patanjali Sastri, C. J., observed :

"It is, therefore, plain that it is only after the Advisory Board, to which the case has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported." In *Dattatraya Moreshwar v. State of Bombay*, 1952 SCR 612 at p. 626: (AIR 1952 SC 181 at p. 186) (C), Mukherjea, J., (as he then was) said:

"It is not settled by a pronouncement of this Court that not only it is not necessary for the detaining authority to mention the period of detention when passing the original order under S. 3 (1) of the Preventive Detention Act, but that the order would be bad and illegal if any period is specified, as it might prejudice the case of the detenu when it goes up for consideration before the Advisory Board. The Advisory Board again has got to express its opinion only on the point as to whether there is sufficient cause for detention of the person concerned. It is neither called upon nor is it competent to say anything regarding the period for which such person should be detained. Once the Advisory Board expresses its view that there is

sufficient cause for detention at the date when it makes its report, what action is to be taken subsequently is left entirely to the appropriate Government and it can under S. 11 (1) of the Act 'confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.'. In my opinion, the words 'for such period as it thinks fit' presuppose and imply that after receipt of the report of the Advisory Board the detaining authority has to make up its mind as to whether the original order of detention should be confirmed and if so, for what further period the detention is to continue. Obviously, that is the proper stage for making an order or decision of this description as the investigation with regard to a particular detenu such as is contemplated by the Preventive Detention Act is then at an end and the appropriate Government is in full possession of all the materials regarding him."

At page 637 (of SCR) : , of the report, the learned Judge further said:

"Under the Constitution, the detention of a person under any law providing for preventive detention cannot be for a period of more than three months unless the Advisory Board is of the opinion that there is sufficient cause for the detention of the person concerned. The Constitution itself has specified the maximum limit of the initial detention and detention for a period longer than three months can only be made on the basis of the report of the Advisory Board,." In view of these observations, it is quite clear what the scheme of the Act is. The Act authorises a possible detention of more than three months; the order of detention is therefore referred to the Advisory Board, and it is only when the Advisory Board makes its report that the appropriate Government fixes the period of detention under sub-s. (1) of S. 11 of the Act.

For all these reasons, we hold that sub-s. (1) of S. 11 of the Act does not contravene any of the provisions of Art. 22 and is accordingly valid."

In "***Arun Ghosh v. State of West Bengal***" the Supreme Court held:

"The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquility there is a vast difference.

The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public

order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

In "***State of Maharashtra v. Bhaurao Punjabrao Gawande***" the Supreme Court held:

".....Personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a Constitution whereby a government was established, their second object, equally important, was to protect the people against the government. That is why, while conferring extensive powers on the government like the power to declare an emergency, the power to suspend the enforcement of fundamental rights or the power to issue ordinances, they assured to the people a Bill of Rights by Part III of the Constitution, protecting against executive and legislative despotism those human rights which they regarded as fundamental. The imperative necessity to protect these rights is a lesson taught by all history and all human experience. Our Constitution makers had lived through bitter years and seen an alien Government trample upon human rights which the country had fought hard to preserve. They believed like Jefferson that "an elective despotism was not the Government we fought for". And, therefore, while arming the Government with large powers to prevent anarchy from within and conquest from without, they took care to ensure that those powers were not abused to mutilate the liberties of the people. (vide A.K. Roy Vs. Union of India (1982) 1 SCC 271, and Attorney General for India Vs. Amratlal Prajivandas, (1994) 5 SCC 54."

In "***Haradhan Saha v. State of West Bengal***" the Constitution Bench of the Supreme Court, on going through the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:-

".....First; merely because a detainee is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second; the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third;

where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order. Fourth; the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth; the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.”

Section 3 – Power to make orders detaining certain persons:

1. The Government may, if satisfied with respect to any bootleggers, dacoit, drug-offender, goonda, immoral traffic offender or lang-grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
2. If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1) exercise the powers conferred by the said sub-section.

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period, from time to time by, any period not exceeding three months at any one time.

3. When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government.

(Emphasis is brought out by me)

Section 8 of the Act required that when a person is detained in pursuance of a

detention order, the authority making such detention order shall, as soon as may be, but, not later than 5 days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the Government.

Section 9 of the Act required the State Government to constitute one or more Advisory Boards, consisting of a chairman and two other members for discharging the functions under the Act.

Section 10 of the Act declares that in every case where a detention order has been made, the Government shall within 3 weeks from the date of detention of a person, place before the Advisory Board, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case the order has been made by an officer under sub-section (2) of Section 3, the report by such an officer shall also be placed before the Advisory Board.

Section 11 of the Act has set out that the Advisory Board shall after considering the materials placed before it and if necessary after calling for such further information in the matter and after considering the representation of the detainee and if the detainee desires to be heard, and after hearing him in-person, shall submit its report to the Government within 7 weeks from the date of the detention of the person concerned. The Advisory Board shall specify in its opinion as to whether or not there is sufficient cause for the detention of the person concerned.

Section 12 of the Act provided for the follow-up action to be taken by the Government on the opinion tendered by the Advisory Board. Sub-section (1) of Section 12 sets out that if the Advisory Board opines that there was sufficient cause for the detention of a person, then the Government may confirm the detention order and continue the detention of the person concerned for such period not exceeding the maximum period specified under Section 13 of the Act, as they think fit.

Sub-Section (2) of Section 12 of the Act in clear cut language imposes an obligation on the Government to revoke the detention order and cause the person detained so far to be released forthwith where the Advisory Board has reported that there is no sufficient cause for the detention of the person.

Section 13 of the Act provided for the maximum period of detention by setting forth that the detention order made under the Act, as confirmed under Section 12 of the

Act shall be 12 months from the date of detention.

Section 14 of the Act empowered the Government at any time either to revoke or modify the order of detention.

Sub-section (2) of Section 14 makes it clear that either the revocation or expiry of the detention order shall not bar the making of a fresh detention order under section 3 against the same person, in any case, where fresh facts have arisen after the date of revocation or expiry, on which the Government or an officer, as the case may be, is satisfied that such an order should be made.

Section 15 empowered temporary release of any such person detained, for any specified period with or without conditions and also at any time may cancel such a temporary release order.

One of us (Justice N.Ramamohana Rao) had occasion to consider the contours of power available to the State Government as well as the officers indicated in Sub-Section (2) of Section 3 of the Act in **B.Venkata Ramana v. The Government of Andhra Pradesh** in the following manner:

“A careful analysis of Section 3 clearly discloses that under sub-section (1) thereof power is conferred upon the State Government, if satisfied, with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land grabber to make an order directing that such person be detained so as to prevent him from acting in any manner prejudicial to maintenance of public order. Sub-section (2) conferred power on the Government, if satisfied that it is necessary to do so, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or Commissioner of Police, by order in writing direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1) of Section 3, to exercise powers conferred by the said sub-section. Thus, sub-section (2) of Section 3 merely authorizes delegation of power by the State Government in favour of the District Magistrate or Commissioner of Police within whose local limits of jurisdiction, the prevailing circumstances or those likely to prevail, require power of preventive detention available to the State Government under sub-section (1) be exercised by such officers. The State Government is required to specify the period during which, the District Magistrate or the Commissioner of Police as the case may be can exercise similar functions which the State Government can exercise under sub-section (1).

The proviso added to sub-section (2) clearly referred to the order of delegation and then specified that it shall not in the first instance exceed 3 months, but however the Government may if satisfied may extend such order, by such period from time to time by any period of not exceeding 3 months at any one time. The proviso is incorporated by the legislature advisedly attempted to confine the delegation likely to be resorted to by the State Government only for a period of 3 months initially and depending upon the circumstances prevailing, the delegation of authority in favour of the District Magistrate or Commissioner of Police may get extended each time by a period of not exceeding 3 months. Clearly the legislature has intended to check the authority of delegation which the State Government is likely to resort to by conferring powers of preventive detention upon the District Magistrate or Commissioner of Police as the case be. But the proviso to Sub-section (2) of Section 3, never attempted to regulate the exercise of power by the delegatee. The Proviso to sub-section (2) therefore, has no connection whatsoever to the period of detention which can be passed by the delegated authority namely the District Magistrate or the Commissioner of Police. The reason is very simple Sub-section (1) while authorizing the State Government to exercise the power of preventive detention never prescribed any period of time for which an order of detention can be made. Therefore, while delegating the powers in favour of the District Magistrate or Commissioner of Police as the case may be, Sub-section (2) also did not contemplate to confine the period of detention to be passed by such officers to be confined to any specific period of time. In fact, it is Section 13, which prescribed 12 months period as the maximum period for which any person may be detained. Thus, there is no particular embargo with regard to period of time for which detention order can be passed under sub-section (1) or sub-section (2) of Section 3 and the limit on the period of detention has been provided only under Section 13 of the Act. Therefore, to my mind, the proviso to sub-section (2) has only imposed a limitation on power of delegation by the State Government and it is not intended to confine the period of detention initially for 3 months.

Sub-section (3) of Section 3 clearly stipulated that wherever an order is passed by the officer specified under sub-section (2), he shall forthwith report the said fact to the Government together with the grounds on which the order has been made by him. This apart the most important part of sub-section (3) spelt out that no such order shall remain in force for more than 12 days after the making thereof, unless, in the meantime, it has been approved by the Government.

This later portion of sub-section (3) is a safety valve provided for by the legislature. That provides for an effective check against any possible error of judgment on the part of the delegatee. Whereas under sub-section (1) of Section (3), it is the State Government which is required to apply its mind and then make an order of detention against any person. But however when it came to the order made by the District Magistrate or the Commissioner of

Police to whom the State Government delegated such powers, the later portion of sub-section (3) compelled the State Government to apply its mind also independently and pass an order of confirmation of the detention order passed by its delegate, by specifying a tight time limit of 12 days for its confirmation. What the statute intended to achieve by this provision was where the State Government is not satisfied about the correctness or regularity of the order of preventive detention passed by its delegate, it may not confirm the same and as a consequence thereof, the order of preventive detention passed by the District Magistrate or Commissioner of Police as the case may be would not remain in force after expiry of the 12th day from the day on which the preventive detention order has been made. Therefore, if a preventive detention order passed by a District Magistrate or Commissioner of Police, had to survive beyond the 12th day, it is essential that the factors which weighed with the District Magistrate or Commissioner of Police must also pass the tests and standards normally applied by the State Government when it intends to pass an order of preventive detention under sub-section (1) of Section 3.

In other words, even if the order of detention is made by the District Magistrate or Commissioner of Police under sub-section (2) of Section 3, specifying the period of detention for 3 months or even a larger period than it but not exceeding 12 months, if such an order does not get confirmed by the State Government within 12 days period of time from the day it is made, such an order cannot have any effect beyond the 12th day. Therefore, in my opinion, order of detention passed by the District Magistrate or the Commissioner of Police, in whose favour such powers have been delegated by the State Government, even if specifies the period of detention, let us say as for 3 months/6 months/9 months or 12 months, it makes no difference for its validity, in as much as such a preventive detention order can survive beyond the 12th day only after the State Government passes an order of confirmation independently, but not otherwise.

Further in every case where a detention order has been made the Government shall within 3 weeks from the date of detention of a person, place before the Advisory board constituted under Section 9 of the Act, the grounds on which the order has been made together with the representation, if any, made by the person affected by the order of detention. Therefore, orders of preventive detention passed by the State Government under sub-section (1) or orders of preventive detention passed under sub-section (2) and confirmed by the State Government under sub-section (3) of Section 3 shall both be required to be placed before the Advisory board within 3 weeks from the date of detention of the person. Under Section 11 the Advisory Board is required to make/forward its opinion within 7 weeks from the date of detention of the person concerned. Significantly, sub-section (1) of Section 11 uses the expression “within 7 weeks from the date of detention of the person concerned”, which in effect means, that, if the State Government

utilizes completely the 3 weeks period which is available to it to place the necessary material before the Advisory Board, then the Advisory Board is only left with 4 weeks time for making available its opinion to the State Government, because the 7 weeks period is to be reckoned not from the date the State Government places the material before the Advisory Board, but the 7 weeks period is liable to be reckoned from the date of detention of the person concerned. From this, it is crystal clear that certain well laid out and tight time frame limits have been incorporated in the Act keeping an eye on the right to liberty of the detainee. This is a procedural safety mechanism incorporated against the orders of preventive detention. These time frames, will have a significance when viewed in the backdrop of sub-section (2) of Section 12, which mandates the State Government to revoke the detention order and cause the person so detained to be released, in case where the Advisory Board has reported that there is no sufficient cause for the detention of the person concerned.

Illustratively put, in case the State Government passed an order of preventive detention under sub-section (1) of section (3) and in all cases where the delegate of the State Government namely the District Magistrate or the Commissioner of Police passes an order of preventive detention under sub-section (2), which order is confirmed within the first 12 days by the State Government, the same will have to be placed before the Advisory board together with all the material which formed the basis for the order of detention together with the representation submitted by the detainee and thereafter, within a maximum period of 4 weeks if the Advisory board tenders its opinion that there is no sufficient cause for detaining such a person, the State Government is obliged to revoke the order of detention and set free forthwith such a person. Thus, looking at the scheme of the statute, it emerges that the prospects of revocation and release from detention in 7 weeks time period from the date of detention are confined to the realm of possibility. This could be one of the reasons why the Statute maker has not specified as to what length of period, an order of detention passed under sub-section (1) or sub-section (2) of Section 3 of the Act shall be initially confined. Therefore, it is not required that the order of detention passed sub-section (1) or sub-section (2) of Section 3 should invariably be confined only for a period of 3 months.”

We are, therefore, of the opinion that there is no legal error committed by Commissioner of Police in passing the order of detention.

Lastly, it was contended that there was delay in dealing with the representation to release the detainee. From the order of rejection it was clear that the representation of the mother was received on 08.01.2015. It was rejected on 10.02.2015. The legal principle on the subject has explained **Debendra Nath Goswami v. The State of West Bengal**, after setting out that there cannot be hard

and fast line that can be drawn and that in the facts and circumstances of each case, it has to be seen whether the government has considered the representation with reasonable dispatch and promptitude realizing the importance that is liable to be attached to the right to personal liberty of the individuals. Then the Supreme Court has spelt out the principle in that regard in the following words:

“This obligation can be meaningful only if such representation is also considered with the same sense of urgency with which the authority is required to communicate the grounds and afford the earliest opportunity to the detenu. It must necessarily follow that if the representation is not considered with the same sense of urgency, the very purpose of providing the communication and the opportunity by sub-art. (5) would be frustrated and defeated. The explanation for the delay has to satisfy the conscience of the Court that the State Government concerned considered the representation with the sense of urgency expected of it by the Constitution.....”

Therefore, the explanation offered clearly brought out as to how the representation has been considered with care and urgency.

Accordingly, the writ petition is dismissed. Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

28.09.2015

Note: L.R. copy to be marked

(B/o)

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