

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

-
W.P.No.39671 of 2015

Between:

Mrs.Samala Dhana Laxmi

.... Petitioner

Vs.

1) The State of Telangana rep. by its Principal Secretary, Revenue
Department, Telangana Secretariat, Hyderabad & Ors.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 31.03.2016

SUBMITTED FOR APPROVAL:

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

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| 1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? | - |
| 2. Whether the copies of judgment may be marked
to Law Reports/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? | Yes |

JUSTICE RAMESH RANGANA1

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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

WRIT PETITION No.39671 of 2015

% Dated 31-03-2016

-

Between:

Mrs.Samala Dhana Laxmi

.... Petitioner

Vs.

\$ 1) The State of Telangana rep. by its Principal Secretary, Revenue Department, Telangana Secretariat, Hyderabad & Ors.

.... Respondents

! Counsel for the petitioner: Sri Vedula Venkataramana,
Learned Senior Counsel for
Sri Kurti Bhaskara Rao.

^ Counsel for respondents : The Advocate-General (TG)
Government Pleader for Home (TG)
Government Pleader for P & E (TG)
Government Pleader for Revenue (TG)

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? Citations:

1. (2006) 2 ALD 367
2. (2006) 5 ALT 739
3. (2011) 5 SCC 244
4. (2012) 2 SCC 386
5. (1975) 3 SCC 198
6. (2005) 3 SCC 663
7. (1999) 4 SCC 514
8. (2011) 10 SCC 215
9. (1970) 1 SCC 98
10. (2012) 2 SCC 176
11. AIR 1953 SC 318 = 1953 SCR 708
12. (1998) 1 WLR 503 (CA)
13. (2004) 7 SCC 467
14. (2004) 3 SCC 75
15. 2013 (4) ALT 243 (D.B)
16. AIR 1981 SC 746
17. (1996) 3 SCC 194
18. (1990) 3 SCC 148
19. (1974) 1 SCC 103
20. 1996(4) ALT 485 = (1997)1 ALT(Cri) 184
21. (2008) 3 SCC 613
22. (1975) 3 SCC 198
23. (2011) 10 SCC 781 = 2012 (5) SCJ 800
24. (1975) 2 SCC 81
25. (1951) 342 US 98
26. (1990) 2 SCC 1
27. AIR 1966 SC 740
28. (1980) 4 SCC 531
29. (1972) 2 SCC 542
30. (1974) 1 SCC 637
31. (1975) 1 SCC 837
32. (1975) 3 SCC 395

33. (1974) 4 SCC 463
34. (1970) 3 SCC 746
35. (1972) 3 SCC 831
36. (1969) 1 SCC 10
37. (1969) 2 SCC 426
38. (1972) 3 SCC 845
39. (1972) 1 SCC 498
40. (1974) 1 SCC 185
41. (1992) 2 SCC 177
42. (2000) 6 SCC 168
43. (1980) 3 SCC 57
44. 2002 (1) ALT 611 (FB)
45. 2004 (1) ALD (Crl.) 561
46. AIR 1952 SC 196
47. 1917 AC 260
48. (1975) 4 SCC 47
49. AIR 1951 SC 157 = 1951 SCR 167
50. (1986) 4 SCC 378
51. AIR 1967 SC 295
52. (1974) 1 SCC 645
53. AIR 1964 SC 72
54. AIR 1950 FC 129
55. (1980) 4 SCC 470
56. (1995) 4 SCC 51
57. (1979) 4 SCC 370
58. (1975) 3 SCC 722
59. 1954 SCR 418
60. (1974) 4 SCC 573
61. 1943 FCR 49
62. AIR 1951 SC 174
63. (1974) 3 SCC 600
64. ILR 1972 AP 1025
65. (1975) 3 SCC 710

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

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Writ Petition No.39671 of 2015

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

A Writ of habeas corpus is sought by the petitioner, for the release of her husband Sri Samala Hari Prasad from illegal custody pursuant to the order of detention passed by the 4th respondent dated 30.11.2015 under Section 3(1) & (2) read with Section 2(a) and (b) of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, "Act 1 of 1986").

The petitioner submits that her husband was carrying on kirana business in the name and style of 'Sony Kirana Shop' at Amangal village; he had obtained a trade licence from Amangal Gram Panchayat, and had

registered himself as a dealer with the Commercial Tax Department in the year 2010; though he possessed a valid trade licence, and registration with the Commercial Tax Department, for carrying on business in black jaggery, respondents 5 and 6 had registered false cases against him as her husband did not comply with their illegal demands; and Crime No.2421 of 2013-14 dated 17.03.2014, Crime No.108 of 2015-16 dated 30.04.2015 and Crime No.754 of 2015-16 dated 30.09.2015 were registered against him for offences under Section 34(e) read with Section 13(1)(f) of the A.P. Excise Act, 1968.

According to the petitioner, black jaggery is consumed in huge quantities during the festival season; the detenu used to purchase large quantities at lesser prices in the district markets and market committees before the festival season, and sell it at a good margin; sale, purchase and transportation of black jaggery is neither prohibited nor is it an offence; possession of black jaggery does not also constitute an offence under the A.P. Prohibition Act; the Agricultural Market Committee collects market fee on this agricultural produce; 4% VAT is charged on the sale price of black jaggery which is neither an intoxicant nor a prohibited commodity; the Commissioner, Prohibition and Excise issued circular dated 22.12.2001 directing law enforcing authorities not to harass persons carrying on business in black jaggery or rotten jaggery or any other form of jaggery as it was an agricultural produce; no conviction or sentence has been imposed by any Court for such an offence; her husband had obtained bail in all the three cases; black jaggery was seized during the course of inspection; the detenu had approached the Judicial First Class Magistrate, Kalwakurthy, and had filed a petition under Section 457 Cr.P.C, seeking release of the seized stock; on the petition being dismissed, he filed Crl.R.C.No.2625 of 2015 on 05.11.2015 before the High Court; the revision was allowed on 05.11.2015 directing respondents 5 and 6 to release the black jaggery on the detenu furnishing a bond for Rs.20,000/-; however, despite their being approached, respondents 5 and 6 have not yet released the seized black jaggery; in the order of detention dated 30.11.2015, the 4th respondent recorded that, from the information placed before her, she was satisfied that the detenu had repeatedly involved himself in the activities of illegal

possession, transportation and sale of black jaggery and alum meant for manufacture of illicitly distilled liquor in contravention of the A.P. Prohibition Act, 1995, the detenu was indulging in activities prejudicial to maintenance of public order, and it was dangerous to the life and health of the public. While stating that all the three criminal cases showed that the detenu was a bootlegger as defined in Section 2(b) of Act 1 of 1986, she also recorded her satisfaction that recourse to normal legal procedure would involve more time, and not be an effective deterrent to prevent the detenu from indulging further in activities that were prejudicial to the maintenance of public order; with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and public health, the provisions of Act 1 of 1986 should be invoked to detain him; in all the three criminal cases, the detenu was shown as A-2, and he had prevented his arrest deputing A-1 to transport the black jaggery on his behalf, and to unload the black jaggery at Vivekananda Statue, Amangal so that the detenu can sell it to illicitly distilled liquor manufacturers in the nearby thandas; however, he had later surrendered before the Court at Kalwakurthy on 24.12.2014 in Crime No.108 of 2015-16 dated 30.04.2015, and Crime No.754 of 2015-16 dated 30.09.2015; he was arrested and released after issuance of notice under Section 41 Cr.P.C. with instructions to appear before the Prohibition and Excise Inspector, S.H.O., Amangal or before the Court as and when needed for further enquiry; all the cases registered against him in Amangal Excise Station did not deter him from indulging in the activities of bootlegging again and again; there were possibilities that he may further indulge in such illegal activities of bootlegging again and again; the said acts were prejudicial to the maintenance of public order as well as dangerous to public health; it had become inevitable to stop him forthwith from indulging in such activities of bootlegging; and therefore, in the exercise of the powers conferred on her under Section 3(1) read with Section 2(a) & (b) of Act 1 of 1986, she was ordering that he be detained from the date of service of the order, and that he be lodged in Central Prison, Cherlapally.

In the grounds of detention dated 30.11.2015, the 4th respondent noted that the detenu did not have any license or hold any permit to deal with any kind of intoxicants under the provisions of A.P. Excise Act, 1968; selling of

arrack was banned in the State from 01.10.1993 onwards; import, transport, manufacture, collection, possession, sale or purchase of arrack without any license or permit was prohibited in the State; issuance of licence for possession or sale of arrack is banned in the State in the larger interests of public health and welfare; sale of arrack, as well as sale of raw material such as black jaggery and alum, used for manufacture of arrack or illicitly distilled liquor, was an offence; the material placed before her revealed that the detenu was indulging in clandestine movement, possession and sale of black jaggery and alum in and around Amangal village and mandal in contravention of the A.P. Prohibition Act, 1995; and he was thus acting as a bootlegger as defined in Section 2(b) of the Act 1 of 1986.

The 4th respondent-detaining authority referred to three criminal cases registered against the detenu. She also noted that one of the samples were sent to the Chemical Examiner, Hyderabad who, after analyzing the sample, came to the conclusion that it contained reducing sugar, it was jaggery not suitable for human consumption, it could be used as raw material in manufacture of illicitly distilled liquor. She, thereafter, referred to the charge-sheet filed in three criminal cases, and to the remarks of the Professor and Chief Physician, Osmania General Hospital, Hyderabad dated 18.07.2007 on the ill-effects of illicitly distilled liquor, and that it caused alcoholic liver diseases, cardiac problems like brandycardia and sudden death cardiomyopathy, mental irritation, stupor, coma, convulsion, renal failure, respiratory depression and metabolic disorders. She perused the opinion of the Regional Prohibition and Excise Chemical Examiner, the letter of the Professor and Chief Physician of Osmania General Hospital, and relied upon the orders of detention, and held that the detenu was engaged in the sale of black jaggery and alum, purely meant for manufacture of illicitly distilled liquor, and his activities were likely to affect adversely in the maintenance of public order because his acts caused grave or wide-spread danger to the life and health of the public. She opined that consumption of such illicitly distilled liquor, which was unfit for human consumption, would positively cause danger to human health, and sale of such illicitly distilled liquor would cause serious threat and danger to public health at large and, thus, adversely affect public order within the meaning of Act 1 of 1986. She

recorded her satisfaction that recourse to the normal law would involve considerable time, and may not be an effective deterrent in preventing the detenu from indulging in similar further activities which were prejudicial to the maintenance of public order in and around Amangal village and mandal. She also noted that, from the material placed before her, she understood that the detenu was arrested in Crime No.108 of 2015-16 and Crime No.754 of 2015-16 and he was released under Section 41 Cr.P.C with instructions to appear before the Prohibition and Excise Inspector or before the Court as and when needed for further investigation. She opined that, unless and until he was detained, there was every likelihood that the detenu would again and again indulge in such illegal activities of bootlegging and it was imperative, therefore, to prevent him from acting in any manner prejudicial to the maintenance of public order. The 4th respondent further stated that, after careful consideration of the facts and circumstances and the material placed before her, she was satisfied that there was an urgent necessity to detain him under Act 1 of 1986. The order of detention was approved by the Government, and the case of the detenu was referred to the Advisory Board for review and opinion under Section 10 of Act 1 of 1986 and, thereafter, the order of confirmation was passed by the Government under Act 1 of 1986 detaining the detenu in preventive detention for a period of twelve months.

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the petitioner, would submit that all the three cases registered against the detenu were under Section 34(e) and 13(1)(f) of the A.P. Excise Act and Clause (3) of the Gur (Regulation of Use) Order, 1968; the Control Order does not prohibit storage and transportation of gur; it prohibits user only (use may include consume); the detention order must have nexus to the object for which preventive detention is resorted to; neither the order nor the grounds of detention record reasons for, and on the basis on which the detaining authority had arrived at the satisfaction that the detenu had indulged in activities prejudicial to the maintenance of public order; there was no material before the detaining authority to show that there was a likelihood of breach of public order; there was no basis for the detaining authority to presume that the black jaggery and alum would be used for

manufacture of illicitly distilled liquor; the satisfaction of the detaining authority, that the detenu had repeatedly involved himself in the activities of possession, transportation and sale of black jaggery and alum meant for manufacture of I.D. liquor (Gudumba), is based on non-existent material and suffers from non-application of mind; under the colour of public order, the intention of the detaining authority was only to prevent the commission of an offence under the A.P. Excise Act; resorting to preventive detention, in such circumstances, is unwarranted and is contrary to Sections 2 and 3 of the Act; and the detaining authority had exercised her power arbitrarily and irrationally. Learned Senior Counsel would rely on **Chindura Muthaiah & Co. v. Dy. Commissioner of Prohibition and Excise, Karimnagar**^[1]; **Deputy Commissioner of Prohibition and Excise, Karimnagar v. Ch. Muthaiah & Co.**^[2]; **Rekha v. State of T.N.**^[3]; and **Munagala Yadamma v. State of A.P.**^[4].

On the other hand, Learned Government Pleader for Home has referred in detail to all the three cases registered against the detenu to submit that the order of detention is valid and does not necessitate interference; the satisfaction of the detaining authority was based on the material placed before her; this Court would not sit in appeal over her subjective satisfaction in this regard; consumption of illicitly distilled liquor is prohibited in the State as it is injurious to public health; and the transportation and storage of black jaggery and alum to be used for the manufacture of illicitly distilled liquor, which would cause widespread damage to public health, is an act prejudicial to the maintenance of public order. He would rely on **Haradhan Saha v. The State of West Bengal**^[5]; **District Collector v. V. Laxmanna**^[6]; **Kanuji S. Zala v. State of Gujarat**^[7]; **D.M. Nagaraja v. Govt. of Karnataka**^[8]; and **Arun Ghosh v. State of West Bengal**^[9].

The personal liberty of an individual is the most precious and prized right guaranteed under Part III of the Constitution. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which should be exercised with due caution,

and on proper appreciation of the facts as to whether such acts seek to disturb public order, warranting the issuance of an order of detention.

(**Munagala Yadamma**⁴; **Yumman Ongbi Lembi Leima v. State of Manipur**^[10]).

Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided, against the improper exercise of the power, must be zealously watched and enforced by the Court. (**Ram Krishan Bhardwaj v. State of Delhi**^[11]). Article 22(3)(b) of the Constitution of India, which permits preventive detention, is an exception to Article 21 of the Constitution. An exception cannot, ordinarily, nullify the full force of the main rule, which is the right to liberty guaranteed under Article 21 of the Constitution. An exception can apply only in rare cases. The imposition of what is, in effect, a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with the ordinary concept of the rule of law. (**Rekha**³; **R. v. Secy. of State for the Home Deptt., ex p Stafford**^[12]). The law of preventive detention can only be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. (**Commr. of Police v. C. Anita**^[13]; **Union of India v. Amrit Lal Manchanda**^[14]).

The power of preventive detention, a frightful and awesome power with drastic consequences affecting personal liberty, should be exercised with the greatest care and caution, and it is the duty of the Courts to ensure that this power is not abused or misused. (**Durgam Subramanyam v. Government of A.P.**^[15]; **Francis Coralie Mullin v. UT of Delhi**^[16]). The power of preventive detention must be confined to very narrow limits, otherwise the right to liberty would be rendered nugatory. To prevent misuse of this potentially dangerous power, the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, however technical, is mandatory and vital. (**Rekha**³). When it comes to fundamental rights under the Constitution, the Court, irrespective of the enormity and gravity of the allegations made against the detenu, must intervene. The gravity of the evil to the community, resulting from anti-social

activities, cannot furnish sufficient reason for invading the personal liberty of a citizen, except in accordance with the procedure established by law, particularly as normal penal laws would still be available for being invoked instead of keeping a person in detention without trial. (**Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad**^[17]; **Mahesh Kumar Chauhan v. Union of India**^[18]; **Prabhu Dayal Deorah v. Distt. Magistrate**^[19]). The law relating to preventive detention has always been strictly interpreted so as to uphold the concept of individual freedom. Courts have zealously safeguard such a right which can only be interfered with under the most stringent and rigorous conditions. (**Pilli Yeteswari v. Govt. of A.P.**^[20]).

In cases of preventive detention no offence is proved. The justification of such detention is suspicion or reasonable probability, and there is no conviction which can only be warranted by legal evidence. Preventive detention is often described as a 'jurisdiction of suspicion'. (**Rekha**³; **State of Maharashtra v. Bhaurao Punjabrao Gawande**^[21]). Preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference of the future course of conduct. (**Haradhan Saha v. The State of West Bengal**^[22]). The power of preventive detention, qualitatively different from punitive detention, is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with the prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention may be made before or during prosecution. An order of preventive detention may be made with or without prosecution, and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. (**Haradhan Saha**²²). 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 surrounding circumstances. (**Haradhan Saha**²²).

The procedural safeguards, prescribed for protection of personal liberty, must be strictly followed. The history of personal liberty is a history of insistence on procedural safeguards. (**Ummu Sabeena v. State of Kerala**^[23]). There is nothing like unfettered discretion immune from judicial review. In a Government under law, there can be no such thing as unreviewable discretion. Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some official, some bureaucrat. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions. This is much more so in a case where personal liberty is involved. Judicial control is necessary to ensure that the power, in the hands of an individual officer or authority, is not misused or abused or exercised arbitrarily or without any justifiable grounds. (**Khudiram Das v. State of W.B.**^[24]; **United States v. Wunderlick**^[25]).

Where the liberty of the subject is involved, it is the bounden duty of the Court to satisfy itself that all the safeguards, provided by the law, have been scrupulously observed, and the subject is not deprived of his personal liberty otherwise than in accordance with law. (**M. Ahamedkutty v. Union of India**^[26]; **Khudiram Das**²⁴). If a man can be deprived of his liberty under a law, by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the law. Strict compliance with the letter of the law is the essence of the matter, in dealing with a statute which drastically interferes with the personal liberty of citizens. It would be legitimate to require, in such cases, strict observance of the law. If there is any doubt whether the law has been strictly observed, that doubt must be resolved in favour of the detenu. (**Ram Manohar Lohia v. The State of Bihar**^[27]).

When a rule is issued, it is incumbent on the detaining authority to satisfy the Court that the detention of the petitioner is legal, and in conformity with the mandatory provisions of the law authorising such a detention. In

answer to the rule, the detaining authority must place all the relevant facts before the Court to show that the detention is in accordance with the provisions of the Act. It would be no argument, on the part of the detaining authority, to say that a particular ground is not taken in the petition. Once the rule is issued it is the bounden duty of the Court to satisfy itself that all the safeguards, provided by the law, have been scrupulously observed, and the citizen is not deprived of his personal liberty otherwise than in accordance with law. (**Ichu Devi Choraria v. Union of India**^[28]; **Niranjan Singh v. State of Madhya Pradesh**^[29]; **Shaikh Hanif, Gudma Majhi & Kamal Saha v. State of West Bengal**^[30]; **Dulal Roy v. District Magistrate, Burdwan**^[31]; **Nizamuddin v. State of West Bengal**^[32]; **Mohd. Alam v. State of West Bengal**^[33]; **Khudiram Das**²⁴).

The burden, of showing that the detention is in accordance with the procedure established by law, is placed on the detaining authority as Article 21 of the Constitution provides, in clear and explicit terms, that no one shall be deprived of his life or personal liberty except in accordance with the procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal that, whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the Court that it has acted in accordance with the law. Even where a requirement of the law is breached in the slightest measure, Courts would not hesitate to strike down the order of detention or to direct release of the detenu. Courts have always regarded personal liberty as the most precious possession of mankind, and have refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade. (**Ichu Devi Choraria**²⁸).

Bearing these principles in mind, let us now note the relevant provisions of the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, the “Act 1 of 1986”), the A.P. Excise Act, 1968, and the Gur (Regulation of Use) Order, 1968. Section 2(a) of Act 1 of 1986 defines ‘acting in any manner prejudicial to the maintenance of public order’ to mean when a bootlegger is engaged, or is making

preparations for engaging, in any of his activities which affected adversely, or are likely to affect adversely, the maintenance of public order. Under the Explanation thereto, for the purpose of Section 2(a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of a bootlegger, referred to in Section 2(a), directly or indirectly is causing or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life or public health. Section 2(b) defines 'boot-legger' to mean a person who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the A.P. Excise Act, 1968 and the rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly supplies any material in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing.

Section 3 confers power to make orders detaining certain persons and, under Sub-section (1) thereof, the Government may, if they are satisfied with respect to any bootlegger, 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, to make an order directing that such person be detained. Under Sub-section (2) of Section 3 if, having regard to the circumstances prevailing or likely to prevail in any area with the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government is 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.

Section 2(19) of the A.P. Excise Act, 1968 defines 'intoxicant' to mean any liquor as defined in Clause (21) or any intoxicating drug as defined in Clause (20), and includes gulmohwa (that is mohwa flower). Section 2(21) defines 'liquor' to include (a) spirits of wine, denatured spirits,

methylated spirits, rectified spirits, wine, beer, toddy and every liquid consisting of or containing alcohol; and (b) any other intoxicating substance which the Government may, by notification, declare to be liquor for the purposes of the Act. Section 2(22-A) defines 'material' to include molasses, wash and such other substances as the State Government may, by notification, specify. Section 2(22-B) defines 'molasses' to mean the heavy, dark coloured residual syrup drained away in the final stage of the manufacture of jaggery or sugar or khandasari sugarcane or gur containing solution or suspension, sugars which can be fermented and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup, but does not include any article which the State Government may, by notification, declare not to be molasses for the purpose of the Act. Section 13(1)(f) of the A.P. Excise Act stipulates that no person shall use, keep or have in his possession any material whatsoever, for the purpose of manufacturing any intoxicant other than toddy except under the authority, and subject to the terms and conditions, of a licence. Section 13(1)(f) makes it an offence for a person to keep, or have in his possession, black jaggery for the purpose of manufacturing any intoxicant. Mere possession of black jaggery would not suffice, and it is only black jaggery in the possession of a person for the purpose of manufacture of I.D. liquor which would attract the penal consequences of Section 13(1)(f) of the Act.

Section 34 of the A.P. Excise Act prescribes penalties for illegal import etc. Section 34(e) read with Section 34(2) of the Act stipulates that whoever, in contravention of the A.P. Excise Act, 1968 or any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under the said Act, uses, keeps, or has in his possession any material for the purpose of manufacturing any intoxicant other than toddy, shall, on conviction, be punished with imprisonment which shall not be less than six months but which may extend to one year, and with fine which may extend upto ten thousand rupees. The offence under Section 34(e) is attracted when a person uses, keeps, or has in his possession any material for the purpose of manufacturing any intoxicant. What is an offence under Section 34(e) read with Section 34(2) is possession of black jaggery for the purpose of manufacturing I.D. liquor, and not mere possession of

black jaggery.

In the exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, the Central Government made the Gur (Regulation of use) Order, 1968 ("Order" for short). Clause 2 of the Order defines "Gur" to mean the article known as gur, jaggery, shakkar, rab and other intermediary products, prepared by boiling sugarcane juice with or without admixture of molasses, which is identifiable by the following characteristics viz., (i) total sugar (sucrose plus reducing sugars) as percentage of dissolved solids ranging from 70.0 to 95.0; and (ii) ash (sulphated plus reducing sugars) as percentage of dissolved solids ranging from 1.5 to 5.0; and includes a solution of any of the aforesaid articles in water. Clause 3 of the Order stipulates that no person shall use gur for any purpose other than for the purpose of (a) consumption in the form of gur; or (b) preparation of any article (not being alcoholic liquor) used as food or drink (or medicine) for human consumption; or (c) cattlefeed. Clause 4(1) enables any officer authorized by the Central Government, with a view to securing compliance with the Order or to satisfy himself that the Order has been complied with, (i) to stop and search any person or vehicle used or intended to be used for the utilization of "gur" other than for the purposes mentioned in clause 3. Clause 4(iii) enables a person to seize, or authorize the seizure of, gur in respect of which he suspects that the provisions of Clause 3 has been, or is being or is about to be, contravened.

In the order of detention dated 30.11.2015, the detaining authority has recorded, that the information placed before him showed that the detenu had repeatedly involved himself in the activities of illegal possession, transportation, and sale of black jaggery and alum meant for manufacture of ID liquor, in contravention of the A.P. Prohibition Act, 1955, and had thus indulging in illegal activities prejudicial to the maintenance of public order and which was dangerous to the life and health of the public. She also recorded her satisfaction that recourse to normal legal procedure would involve more time, and not be effective in preventing the detenu from indulging in further activities that were prejudicial to the maintenance of public order; and, with a view to prevent him from acting in any manner prejudicial to the public health, she was satisfied that the provisions of Act 1

of 1986 should be invoked to detain him.

In the grounds of detention, the detaining authority refers to three criminal cases registered against the detenu, and that, in all the three cases, the samples, sent for analysis to the Chemical Examiner, revealed that it contained reducing sugars, and it was jaggery which “**can be used**” as raw material in the manufacture of illicitly distilled liquor. Thereafter, she observed that the detenu was engaged in the sale of black jaggery and alum, purely meant for manufacture of illicitly distilled liquor; and these activities were likely to affect adversely the maintenance of public order as these acts caused grave danger to the life and health of the public; unless and until he was detained, there was every likelihood that the detenu would again and again involve in illegal activities of bootlegging; and it was imperative to prevent him from acting in any manner prejudicial to the maintenance of public order.

Black jaggery and alum are, by itself, neither an intoxicant nor is it liquor. Any person who sells or distributes black jaggery and alum would not, *per se*, fall within the first limb of the definition of “**bootlegger**” under Section 2(b) of Act 1 of 1986. The second limb, however, stipulates that any person who knowingly supplies any material in furtherance or support of doing of any of the specified things by himself, or through any other person, or who abets in any other person doing any such thing, would also fall within the definition of “**bootlegger**”. Supply of black jaggery and alum, (which are ingredients used in the production of I.D. liquor), for the purpose of manufacture of liquor, would bring the person, who supplies such material, within the expanded definition of “**bootlegger**” under the second limb of Section 2(b) of the Act.

Black jaggery seized from the detenu would fall within the definition of “**Gur**” under Clause 2 of the Gur Control order. “**Gur**”, as defined in Clause (2) of the Order, can be used for the purposes of (a) consumption in the form of gur; or (b) preparation of any article (not being alcoholic liquor) used as food or drink or medicine for human consumption; or (c) cattle feed.

What is impermissible, under Clause 3, is the use of “gur” for preparation of alcoholic liquor. While black jaggery is, no doubt, used as an ingredient for the manufacture of I.D. liquor, it has, as is evident from Clause 3 of the Order, other uses also. It is only a person who supplies black jaggery, for

the purpose of manufacture of liquor/intoxicating drug/or other intoxicant, who would fall within the definition of “**bootlegger**” under Section 2(b) of Act 1 of 1986.

The power conferred under Section 3(1)&(2) of Act 1 of 1986, to make an order directing the detention of a person, is if the Government/District Magistrate/ Commissioner of Police are satisfied (i) with respect to any bootlegger, (ii) it is necessary, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, (iii) to make an order directing his detention. In order to exercise power under Section 3, not only should the detaining authority be satisfied that the detenu is a bootlegger, he must also be satisfied, from the material placed before him, that it is necessary to detain the bootlegger to prevent him from acting in any manner prejudicial to the maintenance of public order.

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**^[34]). “**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**²⁷; **C. Anita**¹³). “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**¹³; **Kanu Biswas v. State of W.B.**^[35]).

Public order embraces more of the community than law and order. Public order is the even tempo of the life of the community taking the country

as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the Society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance, and its effect upon the life of the community in a locality, which determines whether the disturbance amounts only to a breach of law and order or of public order. (**Arun Ghosh**⁹; **Ram Manohar Lohia**²⁷; **Pushkar Mukherjee v. State of W.B.**^[36] and **Shyamal Chakraborty v. The Commissioner of Police, Calcutta**^[37]).

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. 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 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**¹³).

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**³⁴). 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**” .(Ram Manohar Lohia²⁷; Madhu Limaye³⁴).

Every infraction of the law must necessarily affect order, but an act affecting “**law and order**” may not necessarily also affect the “**public order**”. 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. (C. Anita¹³; Kishori Mohan Bera v. State of W.B.^[38]; Pushkar Mukherjee³⁶; Arun Ghosh⁹ and Nagendra Nath Mondal v. State of W.B.^[39]). 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 lesser gravity than those affecting “**public order**”. (C. Anita¹³; Kuso Sah v. State of Bihar^[40]; Harpreet Kaur v. State of Maharashtra^[41]; T.K. Gopal v. State of Karnataka^[42] and State of Maharashtra v. Mohd. Yakub^[43]). The question to ask 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 the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. (Arun Ghosh⁹; Ram Manohar Lohia²⁷; Pushkar Mukherjee³⁶ and Shyamal Chakraborty³⁷). The activities of a bootlegger, or the preparations being made for engaging in activities, which causes or is calculated to cause harm or grave and widespread danger to life or public health would amount to his “**acting in any manner prejudicial to the maintenance of public order**” under Section 2(a) of Act 1 of 1986.

Let us now examine the judgments cited by Learned Counsel on

either side. In the grounds of detention, which fell for consideration before the Supreme Court in **Kanuji S. Zala**⁷, it was stated that the petitioner was a bootlegger as he was involved in the illegal activity of selling liquor; five cases had been filed against him under the Bombay Prohibition Act; three witnesses had given statements wherein they had referred to the activity of the petitioner of selling liquor, and indulging in violence for carrying on the said activity; and it was further stated in the grounds that the said activity of the petitioner was prejudicial to the maintenance of public order. It is in this context that the Supreme Court held that, in the case before it, the detaining authority had specifically stated, in the grounds of detention, that selling of liquor by the petitioner, and its consumption by people of that locality, was harmful to their health; the detaining authority had also stated that the statements of witnesses clearly showed that, as a result of the violence resorted to by the petitioner, the even tempo of public life was disturbed in those localities for some time; the material on record clearly showed that members of the public of those localities had to run away from there, or to go inside their houses and close their doors; the detaining authority had specifically mentioned, in the grounds, that the activity of the detenu was likely to cause harm to public health, and that by itself was sufficient to adversely affect the public order as defined by the Act; the detaining authority had also stated that, as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, the even tempo of public order had also been disturbed on some occasions; and, in view of the material on record, it could not be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine.

In **V. Laxmanna**⁶, the Supreme Court held that, if the detention was on the ground that the detenu was indulging in the manufacture or transport or sale of arrack then that, by itself, would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act; but if the arrack sold by the detenu was dangerous to public health then, under the Act, it became an activity prejudicial to the maintenance of public order; it becomes necessary, therefore, for the detaining authority to be satisfied, on the material available to him, that the arrack dealt with by the detenu is dangerous to public health

to attract the provisions of the Act; and if the detaining authority is satisfied that such material exists, either in the form of the report of the Chemical Examiner or otherwise, a copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.

In **D.M. Nagaraja**⁸ the Supreme Court held that, in the case on hand, they had already extracted criminal activities of the detenu starting from the age of 30, and details relating to eleven cases mentioned in the grounds of detention; it was not in dispute that, in one case, the detenu had been convicted and sentenced to undergo rigorous imprisonment for a term of nine years; he had been acquitted in two cases, and four cases were pending against him wherein he was granted bail by the Courts; it was the subjective satisfaction of the detaining authority that, inspite of his continuous activities causing threat to maintenance of public order, he was getting bail one after another, and was indulging in the same activities; in such circumstances, based on the relevant material and satisfying itself, namely, that it would not be possible to control his habituality in continuing the criminal activities by resorting to normal procedure, the detaining authority had passed an order detaining him under the Act; in view of the enormous material available in the grounds of detention, and as such habituality had not been cited in **Rekha**³, they were satisfied that the said decision was distinguishable on facts with reference to the case on hand; and the contention, based on the same, was liable to be rejected.

In **Munagala Yadamma**⁴, the offences alleged to have been committed by the appellant were such as to attract punishment under the Andhra Pradesh Prohibition Act. The Supreme Court observed that had to be done under the said laws, and taking recourse to preventive detention laws was not warranted; preventive detention involved detaining a person without trial in order to prevent him/her from committing certain types of offences; such detention could not be made a substitute for the ordinary law, and absolve investigating authorities of their normal functions of investigating crimes which the detenu may have committed; and preventive detention, in most cases, was for a year only, and could not be used as an instrument to keep a person in perpetual custody without trial. Following the three-Judge Bench decision in **Rekha**³, the appeal was allowed, the order

passed by the Division Bench of this Court was set aside, and the detention order, issued by the Collector and District Magistrate, was quashed.

The grounds of detention, in the present case, refer to three cases registered against the petitioner by the Prohibition and Excise Department. The first is Cr. No.2421/2013-2014 dated 17.03.2014 wherein reference is made only to the inspection of a vehicle containing 34 gunny bags of 50 kgs of black jaggery each; on enquiry A-1 and A2 are said to have confessed that they were illegally transporting black jaggery and alum; the SHO, P&ESI had drawn two samples each, and had registered a case in Cr. No.2421 under Section 34(e) and 13(1)(f) of the A.P. Excise Act and Clause 3 of the Gur Regulations, 1968; a sample was sent to the Chemical Examiner, Hyderabad who, after analyzing the sample, opined that the sample contained reducing sugar, and it was jaggery which **“can be used”** as a raw material in the manufacture of illicitly distilled liquor. Similarly Ground No.3, of the grounds of detention, relates to Cr. No.754 of 2015-16 dated 30.09.2015 wherein reference is made to the search conducted in the house of the detenu wherein 21 bags each containing 50 kgs of black jaggery was found; two samples were drawn, and a case was registered against the accused; a sample was sent to the Government Chemical Examiner who opined that the sample contained reducing sugar, it was not fit for human consumption, and **“can be used”** as raw material in the manufacture of illicit liquor. Neither of the aforesaid two crimes state that the black jaggery, seized for the vehicle or the premises of the detenu, was for its use in the manufacture of I.D. liquor.

It is only in ground No.2, of the grounds of detention, that such an allegation is made. Ground No.2 relates to Cr. No.108/2015-16 dated 30.04.2015 wherein reference is made to the fact that, on the vehicle being searched, it was found to contain 30 gunny bags of black jaggery of 50 kgs each, and 4 plastic bags of alum each bag containing 40 kgs; on enquiry the detenu and another had confessed that they were illegally transported black jaggery and alum for its sale at the nearby thanda for the manufacture of I.D. liquor; two samples were drawn; a case was registered under Section 34(e) read with 13(1)(f) of the A.P. Excise Act and Clause 3 of the Gur (Regulation of Use) Order, 1968; one sample was sent for analysis to the Chemical Examiner, Hyderabad who opined that the black jaggery sample contained

reducing sugar, it was not suitable for human consumption but “**can be used**” as raw material for manufacture of illicitly distilled liquor.

In **Deputy Commissioner of Prohibition and Excise v. Ch. Muthaiah & Co.**², a Division Bench of this Court noted the following propositions laid down by the Full Bench of this Court, in **Ganesh Traders v. District Collector, Karimnagar**^[44]:

“..... (a) The provisions of the A.P. Excise Act including Sections 13(f) and 34(e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;

(b) **Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer "has reason to believe" that black jaggery (material) is likely to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge-sheet can be filed under Section 34(e) of the Excise Act.**

(c) In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach under Section 482 of Cr.P.C, and-or Article 226 of the Constitution of India and seek quashing of proceedings provided his case comes within well-settled principles for quashing FIR, charge-sheet or criminal case. However, a writ petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor.

(d) If the FIR shows the ingredients of offence under Section 34(e) read with Section 13(f) of the Excise Act, a person cannot be heard to say in High Court that he is carrying on business or transporting black jaggery either because he is an agriculturist or businessman.

All such pleas are to be raised before appropriate criminal Court..”

(emphasis supplied)

Thereafter the Division Bench held that a wholesome reading of Section 34(e) showed that the Legislature had designedly made the actual manufacture, as well as possession of any materials for the purpose of manufacturing any intoxicant, without licence punishable; in other words, if a person is found in possession of any material intended to be used for the manufacture of an intoxicant, and he does not have the requisite licence, then he can be proceeded against under Section 34 read with Sections 45 and 46; it is clear that if a person contravenes the provisions of the A.P. Excise Act, or of any rule made thereunder, and possesses any material

which is intended to be used for the purpose of manufacturing any intoxicant, he can be proceeded against on the ground of violation of Section 34(e); and they were disapproving the view expressed by the learned Single Judge in **Ulli Bhaskar v. State of A.P.**^[45]; and were setting aside the order of the Learned Single Judge in **Chindura Muthaiah & Co.**¹⁾.

It is only "Black Jaggery", which has no other legitimate, established or demonstrable purpose and utility except for the manufacture of an intoxicant, that is comprehended within the meaning of the expression "materials" in Section 13(f) and as such is susceptible to the regulatory framework and to the penalties set out in the 1968 Act including Section 34 thereunder. (**Ganesh Traders**⁴⁴; **Deputy Commissioner of Prohibition and Excise v. Ch.Muthaiah**²⁾). In the present case, the material placed before the detaining authority i.e., the Chemical Examiner's report records the description of the sample as blackish brown irregular masses containing lot of dirt, extraneous matter & substances deleterious to health weighing (100) grams gross in a polythene packet kept in a paper cover and sealed.

The percentage of Hydrometer strength of Alcohol referred to therein is reducing Sugar 64.61%. Under the remarks column, the chemical examiner has stated that the sample contains reducing sugars as shown in the column; it is jaggery not suitable for human consumption, but "**can be used**" as raw material in the manufacturing of illicitly distilled liquor. As noted hereinabove while black jaggery can be used as a raw material in the manufacture of I.D. liquor, it has, as is evident from clause 3 of the Control Order, other uses also. Possession of black jaggery is, *per se*, not an offence. It is possession of black jaggery and alum, for its use in the manufacture of ID liquor, which is an offence under the A.P. Excise Act, and is in contravention of the provisions of the Control Order. The fact that the chemical examiner opined that the sample can be used as raw material for manufacture of illicitly distilled liquor would not, by itself, bring a person, found in possession of black jaggery, within the definition of a "bootlegger" nor can such a person, even if he is held to be a bootlegger, be said to have acted in a manner prejudicial to the maintenance of public order, unless the detaining authority is satisfied, on the basis of the material on record, that possession of black jaggery by the detenu was for its use in the manufacture

of I.D. liquor. It is only in ground No.2, in relation to Cr. No.108 of 2015-16 dated 30.04.2015, is there an allegation that both the detenu and the other accused had confessed to their illegally transporting black jaggery and Alum and to sell it at the nearby thanda for manufacturing of I.D. liquor.

In examining the validity of an order of detention, passed under Section 3(1) & (2) of Act 1 of 1986, it is necessary to bear in mind that preventive detention is "largely precautionary and is based on suspicion". The Court is ill-equipped to investigate into circumstances of suspicion on which such anticipatory action must be largely based. The nature of the proceeding is incapable of objective assessment. The matters to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of surrounding circumstances and other relevant material, is likely to act in a prejudicial manner as contemplated by the provisions of the law and, if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination, and they could not have been intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which, by reason of its special position, experience and expertise, would be best suited to decide them. (**Khudiram Das**²⁴; **State of Madras v. V.G. Row**^[46]; **Rex v. Halliday**^[47]).

While Courts have zealously guarded the personal liberty of citizens, and have strictly construed the provisions of preventive detention laws to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining authorities, it does not mean that they have to, or can rightly and properly, assume either the duties cast upon the detaining authorities by the law of preventive detention or function as courts of appeal on questions of fact. The law of preventive detention is authorised by the Constitution as it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the basis of an established order may outweigh the claims of personal liberty. (**Ram Bali**

Rajbhar v. State of W.B. ^[48]).

Exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that, with a view to prevent a person from acting in a prejudicial manner as set out in the provision, it is necessary to detain such person. The words “*if satisfied*” in Section 3(1) of Act 1 of 1986 imports subjective satisfaction on the part of the detaining authority before an order of detention is made. The power of detention is clearly a preventive measure. It does not partake the nature of punishment. It is taken by way of precaution to prevent harm to the community. Since every preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. (**Khudiram Das**²⁴). It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to the detention being set aside. The detaining authority may act on any material, and on any information, that he may have before him. Such material and information may merely afford the basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for an offence will be tenable. (**C. Anita**¹³).

The subjective satisfaction of the detaining authority, as regards these matters, constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the condition of exercise of the power of detention would be fulfilled. The power of detention is not a quasi-judicial power. (**Khudiram Das**²⁴). It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not reasonably lead to the conclusion that, if he is not detained, he

would indulge in prejudicial activities. Neither can the reasonableness of the satisfaction of the detaining authority be questioned, nor can the adequacy of the material, on which the satisfaction rests, be examined in a Court of law. (**Pushkar Mukherjee**³⁶; **State of Bombay v. Atma Ram Sridhar Vaidya**^[49]).

If the facts alleged are presumed to be true, there is a causal connection between the facts alleged and the purpose of detention, and the formation of the opinion is not malafide, then the sufficiency of the grounds and the truth of the grounds is not germane. (**Suraj Pal Sahu v. State of Maharashtra**^[50]; **Barium Chemicals Ltd. v. Company Law Board**^[51]).

The Court cannot substitute its own opinion for that of the detaining authority when the grounds of detention are precise, pertinent, proximate and relevant. (**C. Anita**¹³). The Court cannot enquire whether grounds exist, which created the satisfaction on which the order could have been made in the mind of a reasonable person. (**Ram Manohar Lohia**²⁷). What is required to be considered in cases of preventive detention is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. Whether the material is sufficient or not is not for the Courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. (**Kanuji S. Zala**⁷).

The subjective satisfaction of the detaining authority is, however, not wholly immune from judicial review. There is an area, limited though it be, within which the validity of the subjective satisfaction can be subjected to judicial scrutiny. As subjective satisfaction is a condition precedent, for exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority. If it is not, the condition precedent would not be fulfilled, and the exercise of power would be illegal. (**Khudiram Das**²⁴). Subjective satisfaction notwithstanding, the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention. (**Khudiram**

Das²⁴; **Bhut Nath Mete v. State of W.B.** ^[52]). If there be found in the Statute, expressly or by implication, matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider. (**Khudiram Das**²⁴). The satisfaction of the authority must be grounded “on material which are of rationally probative value”. The grounds on which the satisfaction is based must be such as a rational human being can consider as being connected with the facts in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the Statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. (**Khudiram Das**²⁴; **Pratap Singh v. State of Punjab** ^[53]; **Machindar v. King** ^[54]).

The Constitutional imperatives of Article 22(5), and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention, (**M. Ahamedkutty**²⁶; **Mangalbhai Motiram Patel v. State of Maharashtra** ^[55]; **Kamleshkumar Ishwardas Patel v. Union of India** ^[56]), i.e., to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him. The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu which would entitle him to approach the Court for relief. The reason

why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenu's constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. (**Mohd. Yousuf Rather v. State of J&K**^[57]).

The detaining authority must arrive at his satisfaction, of the need to detain the detenu in preventive custody, on the material placed before him. Such satisfaction cannot be arrived at on the basis of non-existent material, nor can the order of preventive detention suffer from non-application of mind. As noted hereinabove, it is only with respect to Ground No.2 is it even alleged that possession of black jaggery and alum by the detenu was for its use in the manufacture of illicitly distilled liquor. The order of detention dated 30.11.2015 records that information was placed before the detaining authority that the detenu had "**repeatedly**" involved in the activities of illegal possession, transportation and sale of black jaggery and alum meant for manufacture of I.D. liquor (Gudumba). The word "**repeatedly**", as used in the order of detention, can only mean something done several times or in repetition, and certainly more than once. It is evident, from the order of detention, that the detaining authority was of the view that the detenu had repeatedly (ie several times) involved himself in illegal possession, transportation and sale of black jaggery and alum for the manufacture of ID liquor (gudumba).

As noted hereinabove, among the three criminal cases which form the three grounds of detention, it is only in ground No.2, in relation to Cr. No.108 of 2015, that it is alleged that the detenu was transporting black jaggery and alum for its sale for the manufacture of I.D. liquor. The satisfaction of the detaining authority, in the order of detention dated 30.11.2015, that the detenu had repeatedly involved himself in activities of illegal possession and transportation of black jaggery and alum, meant for I.D. liquor (gudumba), is not based on the material placed before her, and has been arrived at on the basis of non-existent material. The order of detention suffers from non-application of mind, and necessitates being set aside on this ground alone.

It is wholly unnecessary for this Court, therefore, to consider whether a single incident of possession of black jaggery and alum, for its use as raw material in the manufacture of I.D. liquor, would suffice to detain a person in preventive custody, and whether he should have been proceeded against under the provisions of the A.P. Excise Act, as the order of detention is liable to be set aside on the short ground of non-application of mind by the detaining authority, and her satisfaction having been arrived at on non-existent material. It is settled law that even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be invalid. (**Dwarika Prasad Sahu v. State of Bihar**^[58]; **Shibban Lal Saxena v. State of U.P.**^[59]; **Ram Manohar Lohia**²⁷; **Pushkar Mukherjee**³⁶; and **Biram Chand v. State of U.P.**^[60]).

A ground is said to be irrelevant when it has no connection with the satisfaction of the authority making the order of detention. Irrelevant grounds, being taken into consideration for making the order of detention, are sufficient to vitiate it. One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the appropriate authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of the public order. (**Mohd. Yousuf Rather**⁵⁷; **Keshav Talpade v. King-Emperor**^[61]; **Tarapada De v. State of W.B.**^[62]; **Shibban Lal Saxena**⁵⁹; **Pushkar Mukherjee**³⁶; **Satya Brata Ghose v. Mr Arif Ali, District Magistrate, Sibasagar, Jorhat**^[63]; **K. Yadava Reddy v. Commissioner of Police, Andhra Pradesh**^[64]). Where the order of detention is founded on distinct and separate grounds, if any one of the grounds are vague or irrelevant the entire order must fall. The satisfaction of the detaining authority being subjective, it is impossible to predicate whether the order would have been passed in the absence of such vague or irrelevant data. (**Ram Bahadur Rai v. State of Bihar**^[65]).

As the order of detention, whereby the detenu has been kept in preventive custody, is based on non-existent material of the detenu having ***repeatedly*** involved himself in activities of illegal possession and transportation of black jaggery and alum meant for illicitly distilled liquor, it is liable to be set aside. The Writ Petition is allowed, the order of detention is set aside, and the detenu shall be set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date:31.03.2016.

Note: L.R. copy to be marked.
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MRKR/CS

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- [\[1\]](#) (2006) 2 ALD 367
 - [\[2\]](#) (2006) 5 ALT 739
 - [\[3\]](#) (2011) 5 SCC 244
 - [\[4\]](#) (2012) 2 SCC 386
 - [\[5\]](#) (1975) 3 SCC 198
 - [\[6\]](#) (2005) 3 SCC 663
 - [\[7\]](#) (1999) 4 SCC 514
 - [\[8\]](#) (2011) 10 SCC 215
 - [\[9\]](#) (1970) 1 SCC 98
 - [\[10\]](#) (2012) 2 SCC 176
 - [\[11\]](#) AIR 1953 SC 318 = 1953 SCR 708
 - [\[12\]](#) (1998) 1 WLR 503 (CA)
 - [\[13\]](#) (2004) 7 SCC 467
 - [\[14\]](#) (2004) 3 SCC 75
 - [\[15\]](#) 2013 (4) ALT 243 (D.B)
 - [\[16\]](#) AIR 1981 SC 746
 - [\[17\]](#) (1996) 3 SCC 194
 - [\[18\]](#) (1990) 3 SCC 148
 - [\[19\]](#) (1974) 1 SCC 103

- [\[20\]](#) 1996(4) ALT 485 = (1997)1 ALT(Cri) 184
- [\[21\]](#) (2008) 3 SCC 613
- [\[22\]](#) (1975) 3 SCC 198
- [\[23\]](#) (2011) 10 SCC 781 = 2012 (5) SCJ 800
- [\[24\]](#) (1975) 2 SCC 81
- [\[25\]](#) (1951) 342 US 98
- [\[26\]](#) (1990) 2 SCC 1
- [\[27\]](#) AIR 1966 SC 740
- [\[28\]](#) (1980) 4 SCC 531
- [\[29\]](#) (1972) 2 SCC 542
- [\[30\]](#) (1974) 1 SCC 637
- [\[31\]](#) (1975) 1 SCC 837
- [\[32\]](#) (1975) 3 SCC 395
- [\[33\]](#) (1974) 4 SCC 463
- [\[34\]](#) (1970) 3 SCC 746
- [\[35\]](#) (1972) 3 SCC 831
- [\[36\]](#) (1969) 1 SCC 10
- [\[37\]](#) (1969) 2 SCC 426
- [\[38\]](#) (1972) 3 SCC 845
- [\[39\]](#) (1972) 1 SCC 498
- [\[40\]](#) (1974) 1 SCC 185
- [\[41\]](#) (1992) 2 SCC 177
- [\[42\]](#) (2000) 6 SCC 168
- [\[43\]](#) (1980) 3 SCC 57
- [\[44\]](#) 2002 (1) ALT 611 (FB)
- [\[45\]](#) 2004 (1) ALD (Cri.) 561
- [\[46\]](#) AIR 1952 SC 196
- [\[47\]](#) 1917 AC 260
- [\[48\]](#) (1975) 4 SCC 47
- [\[49\]](#) AIR 1951 SC 157 = 1951 SCR 167
- [\[50\]](#) (1986) 4 SCC 378
- [\[51\]](#) AIR 1967 SC 295
- [\[52\]](#) (1974) 1 SCC 645
- [\[53\]](#) AIR 1964 SC 72
- [\[54\]](#) AIR 1950 FC 129
- [\[55\]](#) (1980) 4 SCC 470
- [\[56\]](#) (1995) 4 SCC 51
- [\[57\]](#) (1979) 4 SCC 370
- [\[58\]](#) (1975) 3 SCC 722
- [\[59\]](#) 1954 SCR 418
- [\[60\]](#) (1974) 4 SCC 573
- [\[61\]](#) 1943 FCR 49

[\[62\]](#) AIR 1951 SC 174

[\[63\]](#) (1974) 3 SCC 600

[\[64\]](#) ILR 1972 AP 1025

[\[65\]](#) (1975) 3 SCC 710