

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.32370, 32394, 32395 AND 32397 OF 2018

COMMON ORDER: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Smt.B.Mohana Reddy for petitioners and Sri T.Sikanth Reddy, Government Pleader for respondents.

2. The writ petitions in the order in which they are stated are filed questioning the orders of preventive detention made against Kamsani Buchamma alias Bujamma, Kamsani Sashirekha, Kamsani Sandhya and Kamsani Nirmala under the provisions of the Telangana Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'Act 1 of 1986'). The individual orders of detention are dated 11.07.2018.

3. The learned counsel for the petitioners and the learned Government Pleader have made submissions in the batch of writ petitions by treating W.P.No.32370 of 2018 as the lead case and have further stated that either the ground of challenge against the order of detention and/or the reply either in fact or in law by the respondents is similar in other three writ petitions as well. The batch, it is stated, can be disposed of by referring to the circumstances which led to the filing of W.P.No.32370 of 2018 and the contentions raised therein. The Commissioner of Police, Rachakonda Commissionerate/2nd respondent while passing the orders of detention adverts to the information placed before him that Kamsani Buchamma alias Bujamma, detenu in W.P.No.32370 of

2018 has been indulgent in running brothel house by securing the girls from her community and from other part of the district; forcibly trapping them into prostitution by offering money and luxury life, the detenu is living on the earnings thus earned from the prostitution. The 2nd respondent in the order of detention refers to the information placed before him that the detenu is running the brothel house in organized manner. The detenu, in spite of cases being registered on earlier occasions did not change her way of life and continued to run the brothel soon after release on bail. Therefore, the 2nd respondent states that the illegal activities of the detenu have become detrimental and prejudicial to the maintenance of public order, peace and tranquility to the inhabitants in the locality as well. The detenu was involved in Crime No.37 of 2013 under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short 'the ITP Act, 1956) of P.S.Yadagirigutta under the administrative jurisdiction of 2nd respondent which ended in acquittal on 16.03.2016 in C.C.No.155 of 2015. The order of detention was served on the detenu on 11.07.2018 and was approved by the Government on 17.07.2018. The detenu was allowed to reply before the advisory board and the advisory board on 24.09.2018 recommended for confirmation of the detention. Hence, the writ petition filed challenging Proceedings No.31/PD-Act/CCRB/RCKD/2018 dated 11-07.2018. The detenu is accused in Crime No.214/2018 dated 03.07.2018 of Yadagirigutta P.S under Sections 370, 370 (A) IPC, Sections 3, 4, 5, 6 and 9 of the ITP Act, 1956 and was arrested on

03.07.2018, remanded to judicial custody and lodged in District Jail, Nalgonda.

4. The petitioner challenges the order of detention on the following grounds:

The order of detention by referring to a solitary instance or offence in Crime No.214 of 2018 concludes that the detenu is leading luxurious life and is spoiling bright future and health of innocent girls, the activities are on, in spite of conducting awareness programmes. Therefore, even for the limited extent of subjective satisfaction of the detaining authority this ground is unavailable. The conclusions arrived at by the detaining authority that there is possibility of moving bail petition at any moment to come out of the prison and there is every possibility of indulging in similar offence soon after release on bail etc., is without any basis. The conclusion of detaining authority on propensity to indulge in same activity in which the detenu is shown as accused by referring to one case is untenable in law and fact. The invocation of the authority or jurisdiction under Act 1 of 1986 against detenu instead of prosecuting the case in Crime No.214 of 2018 is untenable. The recourse to Act 1 of 1986 is not matter of course, but in circumstances satisfies the provisions of Act 1 of 1986. The order of detention reflects non-application of mind by the detaining authority. Secondly, it is contended that the order of detention is served on the detenu in English and Telugu languages. The order of detention was not read over and explained to detenu in the language in which she can understand i.e., Telugu language. This procedural omission disabled the detenu from making effective

representation on the order of detention. The said omission amounts to violation of Article 22(5) of the Constitution of India. It is further contended that the order of detention cannot be understood as made to prevent disturbance to public order. There is difference between law and order and public order. By referring to a stray circumstance, it cannot be contended that the public order in the area within the local limits of 2nd respondent is in any way imperiled and warrants a detention order. The detention order does not satisfy the requirements that the authority passing the order is aware that the detenu is actually in custody and has reason to believe or the material placed before him (a) that there is real possibility of detenu releasing on bail (b) that on being so released, the detenu in all probability indulges in prejudicial activity; and (c) if detaining authority felt essential to detain the detenu to prevent the detenu from doing the very same activity for which the detenu has been arrested. The order of detention does not record satisfaction justifying preventive detention and that there is every possibility of detenu indulging in similar offence soon after enlargement on bail.

5. The counsel for petitioner by referring to these grounds emphatically contends that the order of detention is liable to be set aside.

6. The learned counsel for petitioner further contends with considerable force that the order of detention in the circumstances referred to and accepted by the 2nd respondent do not satisfy the meaning of public order and there is certainly ambiguity in understanding these two distinct situations namely, 'public order'

and 'law and order'. She refers to the leading cases on what constitutes public order and how it is distinct from law and order. She relied on *Dr. Ram Manohar Lohia v. State of Bihar*¹, *Arun Ghosh v. State of West Bengal*², *K.K. Saravana Babu v. State of Tamil Nadu*³, *Collector and District Magistrate v. S. Sultan*⁴ and *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*⁵ and *Ramlila Maidan Incident, in Re.*⁶.

7. Both for brevity and to avoid repetition of a well established proposition of law, we refer to the earliest decisions on the point and the operative portion of these two earliest decisions read thus:

In *Dr. Ram Manohar Lohia case* (1 supra):

“The case is distinguishable on more than one ground. To begin with, it dealt with an entirely different situation and different provision of law. No order in writing specifying satisfaction on any or all of the grounds was required. Detention under Regulation 18-B required an order just as detention under the Defence of India Act. The distinction between action under Regulation 51 and that under Regulation 18-B was noticed by the Court of Appeal in *Point of Ayr Collieries Ltd. v. Lloyd-George*. It is manifest that when property was requisitioned it would have been a futile exercise to determine whether the act promoted the efficient prosecution of the war, or the maintaining of supplies and services. But when a person is apprehended and detained it may be necessary to set out with some accuracy what he did or was likely to do within the provisions of Rule 30, to merit the detention. The use of one phrase meaning a different thing in place of that required by the Act would not do, unless the phrase imported means the same thing as the phrase in the Act. Here the phrase used is maintenance of law and

¹ AIR 1966 SC 740

² (1970) 1 SCC 98

³ (2008) 9 SCC 89

⁴ (2008) 15 SCC 191

⁵ (2010) 5 SCC 246

⁶ (2012) 5 SCC 1

order and we must see how that phrase fits into the Rule which speaks of maintenance of "public order". The words "public order" were considered on some previous occasions in this Court and the observations made there are used to prove that maintenance of public order is the same thing as maintenance of law and order. We shall refer to some of these observations before we discuss the two phrases in the context of the Defence of India Rules.

Reliance is first placed upon a decision of the Federal Court in [Lakhi Narayan Das v. Province of Bihar](#) where the Court dealing with item 1 of Provincial List, 7th Schedule in the Government of India Act, 1935 which read-

"Public order (but not including the use) of His Majesty's naval, military or air -forces in aid of the civil power) "

observed that "public Order" with which that item began was "a most comprehensive term". Reference is also made to *Ramesh Thapar v. State of Madras* (1) where this Court dealing with the same subject matter also observed :

". . . 'Public order is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established it must be taken that 'public safety' is used as a part of the wider concept of public order and inferring to Entry 3 in List III (Concurrent List) of the 7th Schedule of the Constitution which includes the "security of a State" and "maintenance of public order" as distinct topics of legislation, observed-

"The constitution thus requires a line to be drawn in the field of public order or tranquillity, marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder -which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were- differences in kind."

Fazl Ali J. took a different view which he had expressed more, fully in *Brijbhushan and Another v. the State of Delhi*, but he also observed that "public safety" had, as a result of a long course of legislative practice, acquired a well recognized meaning and was taken to denote safety or security of the State and that the expression "public order" was wide enough to cover small disturbances of the peace which do not jeopardise the security of the State and paraphrased the words "public order" as public tranquility."

Both the aspects of the matter were again before this Court in *The Superintendent Central Prison, Fatehgarh v. Ram Manohar Lohia* when dealing with the wording of clause (2) of [Art. 19](#) as amended by the Constitution (First Amendment) Act, 1951, it fell to be decided what "public order" meant. Subba Rao J. speaking for the Court referred to all earlier rulings and quoting from them came to the conclusion that "public order" was equated with public peace and safety and said :

"..... Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in [Art. 19\(2\)](#) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of Art. 19"

Summing up the position as he gathered from the earlier cases, the learned Judge observed: "'Public order, is synonymous with public safety and tranquility: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State;.".

These observations determine the meaning of the words 'public order" in contradistinction to expressions such as "public safety", "security of the State". They were made in different contexts. The first three cases dealt with the meaning in the legislative Lists as to which, it is settled, we must give as large a meaning as possible. In the last case the meaning of "public order" was given in relation

to the necessity for amending the Constitution as a result of the pronouncements of this Court. The context in which the words were used was different, the occasion was different and the object in sight was different.

We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. 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. Does the expression "public order" take in every kind of disorder or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. 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(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of

State", "law and order" also comprehends disorders of less gravity than those affecting 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 security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

8. In Arun Ghosh case (supra 2), the Hon'ble Supreme Court after referring to the binding precedents till then has illustriously stated on public order and the difference between maintenance of law & order and public order as follows:

"Public order was said to embrace 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 tranquility. 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. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own

gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. 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 affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognized as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar, and Hidayatullah,

JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. 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 tranquility 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.”

9. She further contends that the order of detention does not satisfy the principle laid down in *N.Meera Rani v. State of Tamil Nadu*⁷. The ratio is to the effect that (a) there is real possibility of detenu releasing on bail (b) that on being so released, the detenu in all probability indulges in prejudicial activity; and (c) if detaining authority felt essential to detain the detenu to prevent the detenu from doing the very same activity for which the detenu has been arrested.

10. In the case on hand, there is no consideration of possibility of the detenu releasing on bail is not considered and the necessity to restrict the movement of detenu by passing order of preventive detention. She also relies on the decision in *Collector & District Magistrate, West Godavari, Euru, A.P. v. Sangala Kondamma*⁸ for the contention that proximity of past instances are to be correlated to the present circumstance. Unless and until the nexus is subjectively shown and established, the reference to solitary instance otherwise vitiates the order of detention.

⁷ (1989) 4 SCC 418

⁸ (2005) 3 SCC 666

11. The petitioner relies on *Kamleshkumar Ishwardas Patel v. Union of India*⁹ for the proposition that this Court while discharging constitutional obligations to enforce the fundamental rights of the people, more especially the right to personal liberty cannot allow itself to be influenced by the considerations which weigh with the authority for passing the order of detention. The procedural safeguards if are not adhered to, this Court is under obligation to set aside the order of detention. The right guaranteed under Article 22 (4) and (5) of the Constitution is sacrosanct and in the case on hand the safeguards are completely breached.

12. Sri T. Sikanth Reddy contends that the order of detention is satisfying the subjective satisfaction of detaining authority and that there is no procedural violation or deviation of Article 22(5) of the Constitution of India. He submits that Act 1 of 1986 authorizes the Government or the competent authority to pass orders of detention preventing dangerous activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers from perpetuating the habitual conduct. Act 1 of 1986 enables the competent authority to pass detention orders against persons who satisfy the provisions of Section 2(a), (i) read with Section 3 of Act 1 of 1986. He submits that this Court in exercise of judicial review against the order of detention keeps in view the provisions of Act 1 of 1986 which has bearing on the authority and the purpose for which the order of detention is passed by 2nd respondent, the parameters within which the subjective satisfaction is required, recorded and how the subjective satisfaction is appreciated in the

⁹ (1995 4 SCC 51)

background of the statutory scheme. He submits that the subjective satisfaction of the detaining authority while exercising power under Act 1 of 1986 and in particular fact situation of a case is on the purpose for which the preventive detention order is made. He relies on Section 2(a), (i) and sub-sections (1) and (2) of Section (3) which read thus”

“Section 2 (a): Acting in any manner prejudicial to the maintenance of public order” means when a boot-legger, a decoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Section 2 (i) “ Immoral traffic offender” means a person who commits or abets the commission of any offence under the Immoral Traffic in Women and Girls Act, 1956.”

Section 3 (1) : The Government may, if satisfied with respect to any bootlegger, 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.

Section 3 (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.”

13. At the outset, he submits that the order of detention in the case on hand is examined by understanding Section 2(a) definition as follows:

14. Acting in any manner prejudicial to the maintenance of public order means when an immoral traffic offender is engaged or is making preparations for engaging in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order. By referring to explanation to Section 2 (a), the public order in the present scenario and to satisfy that the activities either directly or indirectly is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public etc. or cause grave widespread danger to life or public health. The definition of 2(i) of immoral traffic offender is attracted in the case on hand and the preventive detention order is examined from the statutory scheme of Act 1 of 1986 and by ensuring the protection granted under Article 22 of the Constitution of India. He refutes the factual basis for the first ground of challenge i.e. the order of detention is based on a solitary ground by drawing the attention of the Court to Crime No.37/2013 under Sections 3, 4 and 5 of ITP Act, 1956 and the acquittal of detenu on 16.03.2016 in C.C. No.155 of 2016, and submits that the order of detention is not based on the solitary ground of Crime No.214 of 2018, but the detaining authority referred to another case as well which information constituted integral part of the consideration by the detaining authority. Therefore, according to him, the contention that the order of detention is based on one solitary instance is incorrect and secondly the basis depends on the

facts and circumstances and for the said proposition he relies on the decisions in *State of Tamil Nadu through Secretary to Government, Public (Law and Order-F) & another v. Nabila and another*¹⁰ and *A.Geetha v. State of T.N. and another*¹¹.

15. On the second ground namely, by not reading over and explaining the contents of material in Telugu language, the order of detention is vitiated, he submits that Section 8 (1) of the Act 1 of 1986 reads thus:

“When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but, not later than five 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.”

and according to the said requirement, the detaining authority as soon as may be, but not later than five days from the detention order communicates to detenu the grounds on which the order has been made and shall afford the detenu the earliest opportunity of making a representation against the order of detention. The said requirement is in line with Article 22 (5) of the Constitution of India. By referring to record, he contends that on 11.07.2018 the order of detention was served and acknowledged by the detenu. The detenu did not object or complain before the Advisory Board or to the Government on the failure on the part of the detaining authority in reading over the contents of documents in Telugu language. The certificate issued by the jail authorities disproves the said contention. Therefore, as matter of fact, it is contended that this

¹⁰ (2015 12 SCC 127

¹¹ (2006) 7 SCC 603

ground is untenable against the order of detention. On the contention that the solitary instance does not come within the meaning of public order and preventive order of detention ought not to have been made by the detaining authority but the prosecution ought to have pursued, he submits that the detaining authority after taking note of conduct by referring to the immoral activities alleged to have been committed by the detenu found that due to detenu's immoral activities viz. where the college going girls from the locality come out of their houses, the male would be thinking that all the girls hail from locality are indulging in the prostitution. He relies on the decisions of the Apex Court in Commissioner of Police v. C.Anita (Smt)¹² and Arun Ghosh v. State of West Bengal¹³ which read as follows:

In C.Anita (Smt) case:

Sub-section (2) of [Section 3](#) with reference to which the order of detention has been passed reads as follows:

"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

¹² (2004) 7 SCC 467

¹³ (1970) (1) SCC 98

time by any period not exceeding three months at any one time.

The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public order' from that concerning 'law and order'. The question to ask is; "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts. "Public order" is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on its facts.

Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State.

Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.

In Arun Ghosh case (2 supra):

“The submission of the counsel is that "these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: [Dr. Ram Manohar Lohia v. State of Bihar](#) ; [Pushkar Mukherjee and Ors. v. State of West Bengal](#) and [Shyamal Chakraborty v. The Commissioner of Police, Calcutta and Anr.](#) . In Dr. Ram Manohar Lohia's case this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. “Public order was said to embrace 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 tranquility. 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. Take for instance, a man stabs another. People may be

shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. 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 affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognized as meaning something more than ordinary

maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar, and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. 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 tranquility 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."

16. On the last ground namely that the detaining authority has not followed the well established requirement of recording subjective satisfaction on three requirements namely, the detenu is in custody, applied for bail, likely to get bail and if enlarged on bail likely to result in the same conduct and, therefore, there is necessary to prevent the detenu from indulging in same set of activities, he draws the attention of the Court to the order and states that the detaining authority is aware that the detenu is in judicial custody. The detaining authority did not refer to moving bail application by the detenu, likely to give note of the custody that no such application is pending but has referred to the details of

rescued women from the brothel house where the incident has happened and has stated as follows:

“ It is pertinent to submit that in a series of decisions, the Apex Court has held that it is the subjective satisfaction of the detaining authority, whether a person has to be detained for a particular period of time or not. It is relevant to mention herein that the Hon'ble Apex Court in a decision reported in Subrahmanian V. State of Tamil Nadu (2012 (4) SCC 699) held that “it is well settled law 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 the 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 to conduct in an exhaustive manner. The satisfaction of the detaining authority, therefore is considered to be of the primary importance with certain latitude in its discretion. In the impugned grounds of detention, the detaining authority has narrated all the reasons for passing the detention order detaining the detenu to prevent him from disturbing public order as the recourse to normal criminal proceedings did not have the desired impact. The detenu continued to create a situation of wide spread danger to public health and detrimental to public order.”

17. The learned Government Pleader at the end submits that the Court is required to bear in mind the meaning assigned to the words

‘public order’ under Section 2(a) r/w explanation thereto. According to him, the case on hand satisfies the definition of detenu since is booked under the Immoral Traffic in Women and Girls Act, 1956 engaged in all her activities as such which affect adversely and are likely to adversely affect for maintenance of public order. According to the explanation, the public order shall be deemed to satisfy if the activities of any person referred in this clause directly or indirectly are causing or 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. He draws our attention to the conclusions arrived at by the 2nd respondent and contends that public order is not appreciated or understood with reference to citations on which the petitioner is relying on but the public order as defined in the special enactment is appreciated and considered by the Court. He further submits that the 2nd respondent while dealing with a case coming under Act 1 of 1986 read with ITP Act, 1956 acts to prevent perpetuation of prostitution which is again in the nature of exploitation of human life of victims for commercial sex exploitation. The preventive detention order is more in the nature of precautionary principle followed to protect the life of victim. He relies on *Pramod Bhagwan Nayank v. State of Gujarat*¹⁴ to develop an argument that in cases of this nature the endeavour is to protect Articles 22 and 23 of the Constitution of India. According to him, the situation on hand balances both the things. Therefore, situation satisfies the duty imposed by Article 23 of the Constitution

¹⁴ (2007 1 GLR 796)

of India on respondent No.2. He prays for dismissing the writ petition.

18. We have taken note of rival submissions of the learned counsel appearing for the parties, perused the record and particularly the order of detention dated 11.07.2018 and the annexures served on the detenu on 13.07.2018.

19. Now, the point for consideration is:

Whether the orders of detention dated 11.07.2018 are valid, legal and satisfy the requirement of Article 22 (4) of the Constitution of India?

20. The applicability of the binding precedents relied on by the counsel appearing for the parties is depending on the objections raised by the petitioner vis-à-vis compliance with these procedural safeguards or otherwise by the detaining authority. The order of preventive detention is qualitatively different from punitive detention. The power of preventive detention is precautionary power exercised in reasonable anticipation of the detenu committing the offence. The detention may or may not relate to an offence. The detention order is not parallel proceedings. The order of detention does not overlap with prosecution even if it relies on certain facts for which the 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 order of preventive detention. The order of preventive detention is also not a bar to prosecution.

21. The Apex Court in *Haradhan Saha v. The State of West Bengal*¹⁵

stated the scope of preventive detention as follows:

“The power of preventive detention is qualitatively different from punitive detention. The power of preventive 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 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.”

22. *State of Maharashtra v. Bhaurao Punjabrao Gawanda*¹⁶, considered the scope of judicial review of pre-execution to pre-arrest challenge to detention order, subjective satisfaction, scope of judicial review, grounds of challenge and the operative portions read thus:

“PREVENTIVE DETENTION : NECESSARY EVIL:

Liberty of an individual has to be subordinated, within reasonable bounds, to the good of the people. The framers of the Constitution were conscious of the practical need of preventive detention with a view to striking a just and delicate balance between need and necessity to preserve individual liberty and personal freedom on the one hand and security and safety of the country and interest of the society on the other hand. Security of State, maintenance of public order and services essential to the community, prevention of smuggling and black marketing activities, etc. demand

¹⁵ (1975) 3 SCC 198

¹⁶ (2008) 3 SCC 613)

effective safeguards in the larger interests of sustenance of a peaceful democratic way of life.

In considering and interpreting preventive detention laws, courts ought to show greatest concern and solitude in upholding and safeguarding the Fundamental Right of liberty of the citizen, however, without forgetting the historical background in which the necessity an unhappy necessity was felt by the makers of the Constitution in incorporating provisions of preventive detention in the Constitution itself. While no doubt it is the duty of the court to safeguard against any encroachment on the life and liberty of individuals, at the same time the authorities who have the responsibility to discharge the functions vested in them under the law of the country should not be impeded or interfered with without justification [vide [A.K. Roy v. Union of India](#); [Bhut Nath v. State of West Bengal](#), (1974) 3 SCR 315; [State of W.B. v. Ashok Dey](#), (1972) 2 SCR 434; [ADM Jabalpur v. Shirakant Shukla](#), 1976 Supp SCR 132].

SUBJECTIVE SATISFACTION : SCOPE OF JUDICIAL REVIEW:

Subjective satisfaction being a condition precedent for the exercise of the power of preventive detention 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 to the exercise of the power would not be fulfilled and the exercise of the power would be bad.

A Court cannot go into correctness or otherwise of the facts stated or allegations levelled in the grounds in support of detention. A Court of Law is 'the last appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based.'

That, however, does not mean that the subjective satisfaction of Detaining Authority is wholly immune from judicial reviewability. By judicial decisions, courts have

carved out areas, though limited, within which the validity of subjective satisfaction can be tested judicially.

GROUND OF CHALLENGE:

An order of detention can be challenged on certain grounds, such as, the order is not passed by the competent authority, condition precedent for the exercise of power does not exist; subjective satisfaction arrived at by the Detaining Authority is irrational, the order is mala fide; there is non- application of mind on the part of the Detaining Authority in passing the order; the grounds are, or one of the grounds is, vague, indefinite, irrelevant, extraneous, non- existent or stale; the order is belated; the person against whom an order is passed is already in jail; the order is punitive in nature; the order is not approved by State/Central Government as required by law; failure to refer the case of the detenu to the Board constituted under the statute; the order was quashed/revoked and again a fresh order of detention was made without new facts, etc. “

23. We have given our anxious consideration to rival submissions and considered them as follows:

24. The first contention of petitioner is that the order of detention is based on solitary instance of registration of Crime No.214/2018 on the file of P.S.Yadagirigutta of Rachakonda Commissionerate. Therefore, a solitary instance showing the detenu as accused in a crime cannot and could not be treated as circumstance warranting the necessary conclusion of restraining the liberty of a person by passing the order of preventive detention under Act 1 of 1986. The decision relied on by the petitioner is to be considered if as matter of fact the order of detention proceeded by referring to a solitary instance which by itself satisfies Section 2(a) read with Section 3 (1) and (2) of Act 1 of 1986. In the case on hand, the

reply of respondents and otherwise borne out by the order of detention is also that the 2nd respondent referred to Crime No.37/2013 (CC No.155 of 2015) registered under Sections 3, 4, and 5 of ITP Act, 1956 which ended acquittal on 16.03.2016 and in continuation referred to the registration of Crime No.214 of 2018 *inter alia* under Sections 3, 4, 5, 6 and 9 of the ITP Act, 1956. Therefore, the first ground that the order of detention is passed by referring to a solitary instance is factually incorrect. Here, we may hasten to add that in the case on hand, the detenu was acquitted on 16.03.2016 and on 03.07.2018 again the detenu is shown as one of the accused in an offence under the ITP Act. Therefore, from the material on record, this Court is satisfied that the order of detention is not passed by referring to a solitary instance. In *Fazeela Salim v. The Joint Secretary to the Government of India*¹⁷ delivered by one of us (Justice Sri Thottathil B. Radhakrishnan as then he was) while dealing with the orders of detention passed under COFEPOSA Act considered the growth of legislation in exercise of the power conferred on the State Legislatures in law and order etc. and has held as follows:

“The protection under Article 22(5) of the Constitution of India read with Section 3(3) of the COFEPOSA Act requires that the person against whom an order for preventive detention has been passed shall be given the earliest opportunity of making a representation against the order of detention by communicating to him the grounds of detention, thus enabling him to effectively utilize such opportunity. Liberty of individual in terms of the Constitution is not merely a technical matter but a sacrosanct one. Judicial review of the preventive detention of a person has to be

¹⁷ 2017 SCC Online Ker 8386

carried maintaining a fine equilibrium on the scales of the statute laws relevant to the preventive detention under challenge and Articles 21 and 22 of the Constitution; as also the constitutional values, principles and prescriptions lying embedded in the entire body of the Constitution, including its preamble. Such cohesive consideration is indispensable in view of the fact that the constitutional provisions are so laid, that the rights and duties of the citizens including Fundamental Rights and the rules of governance of the Nation as discernible from the Constitution cannot be read in isolation among themselves. Individual liberty is among the prime salutary doctrines of the collective existence of the great polity governed by the Constitution of India. But when such collective existence is perilously or demonstrably visited in violation of the seminal principles of national governance and collective national existence reflected through the Directive Principles of State Policy taken along with the Fundamental Duties and Fundamental Rights; then, clearly; the situation demands that a sustainable balance is to be ensured as between the physical liberty of the individual, vis-à-vis the physical as well as economic liberty of other citizens in an orderly society governed by Rule of Law. Contextually, it is apposite to bear in mind that the legal history of the precedent law relating to preventive detention in independent India has to be examined in the backdrop of the political alchemy and the socio-economic situations which prevailed, as different laws relating to preventive detention came to be made in India, from time to time. The Defence of India Rules, 1962 ('DIR', for short) had a particular backdrop of facts situation for its making. Later, the Maintenance of Internal Security Act, 1971, included certain other aspects than what were covered under the DIR. The quality and nature of allegations which would have brought a person under cover of preventive detention under those provisions and the statutory provisions of the COFEPOSA Act have purposive and qualitative variations which cannot be ignored while choosing judicial precedents rendered in connection with different legislative provisions, though the cardinal liberty doctrine in re preventive detention recognized as

Fundamental Right through the different clauses of Article 22 ought to be read as a lead chord of the Constitution. The evaluation of cases falling under COFEPOSA enforcement cannot be treated under any straight jacket formula applying the precedent law laid down with reference to the earlier statute laws. When we say this, we underscore the need to insist upon full compliance of the constitutional commands handed down while prescribing the Fundamental Right guaranteed under Article 22 of the Constitution of India. Unless liberty issues in contextually different settings which occur in the society with the change of times, are examined bearing in mind the situational requirement in terms of the Constitution and the laws, that will erode the contextual equilibrium to be maintained between individual rights, including liberty issues as well as collective and societal rights to physical freedoms from deprivation of life and also the collective eligibility to have economic and socio-economic liberty and rights of the citizens collectively and individually. The Constitution, always recognized as a vibrant document, which reflects the aspirations of the people as the primary rules of governance of a congenial society has to be appreciated and applied time centric and issue centric. Obviously, change of times and change of the statute laws made under the constitutional power which are to be applied from case to case would necessarily call for a differential approach when dealing with cases under different statutes, without losing the basic constitutional foundations. We may refer to the decision of the Division Bench of this Court in *Abulais v. State of Kerala* (2017 (1) KLT 650) in which the precedent handed down by the Honourable Supreme Court of India in *Subhash Popatlal Dave v. Union of India* (2014) 1 SCC 280) was noted to the effect that every judge of constitutional courts vested with the authority to adjudicate the legality of any State action challenged on the ground that such action is inconsistent with civil liberties guaranteed under the Constitution, must always keep in mind while exercising such authority, the prescribed principle quoted in that judgment from *American Communications Association v. Douds* (339 US 382 (1950) which reads as follows:

“The task of this Court to maintain a balance between liberty and authority is never done, because new conditions today upset the equilibriums of yesterday. The see-saw between freedom and power makes up most of the history of governments, which, as Bryce points out, on a long view consists of repeating a painful cycle from anarchy to tyranny and back again. The court’s day-to-day task is to reject as false, claims in the name of civil liberty which, if granted, would paralyze or impair authority to defend existence of our society, and to reject as false claims in the name of security which would undermine our freedoms and open the way to oppression.”. (emphasis added)

25. In the case on hand, the orders of detention are made under Act 1 of 1986. The detaining authority recorded the subjective satisfaction required under Section 3 by referring to the involvement of detenu in trafficking women and recorded the following finding:

“The police rescued the victim woman namely 1) Kamsani Jhani D/o.Raju , aged 25 yrs 2) Kamsani Gouri D/o.Murthy, aged 35 yrs 3) Kamsani Swapa D/o.Ramesh aged 30 years 4) Kamsani Pravanya D/o Pentaiah aged 25 yrs all R/o. Ganesh Nagar, Yadagirigutta Town and handed over to their inmates through the Hon’ble Judicial First Class Magistrate at Alair.

Since, the accused habituated for running of brothel house at her residence itself, there is every possibility of moving bail petition at any movement to come out of the prison. There is every possibility of her being indulge in similar offences soon after released on bail as she is habituated to live on the earnings of the prostitution as such her illegal activities are prejudicial to maintenance of Public Order.”

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“The trafficker/Organizer Smt.Kamsani Buchamma @ Bhujamma along with her community women has become a syndicate gang and they used to induce the

girls from their Community and from other places by offering money and luxury life and later dragging them into prostitution and running brother houses. The house of accused is located enroute of Sri Lord Laxminarasimha Swamy Temple (Old temple) and they attract the male devotees while they were proceeding to temple by their indecent gestures and involving them in co-habitation with the sex workers. They share the business proceeds equally and give meager amounts to the victims. The immoral activities of the accused are highly endangering to the family system, harmful to the inhabitants of the locality, creating embarrassing situation to the families and also her immoral activities are leading to social unrest, contract wide spread contagious and sexually transmitted diseases like HIV, Syphilis, Gonorrhea etc. endangering public health at large. The locality people have got an embarrassment in the vicinity as it has been running for long time. Though, the Police raided the premises earlier in number of times, registered the cases, they could not mend their attitude and they continued to run the brother business taking it as their profession for livelihood. The Police in association with NGOs have conducted counseling as many times and briefed them above the consequences of prostitution. The criminal activities of the accused also effect the bright future of youth who attract for the sex workers. They are being caught by the Police in the raids and involving the Criminal Cases. Thus, her activities are prejudicial to the maintenance of public order and public health at large. The accused habituated to earn easy money by organizing brothel house in her home. Despite cases booked against her earlier, she is continuing her activities in a brazen manner which is creating public disorder.

Due to her immoral activities, the college going girls from the locality are scared to come out of their houses as they male youth are in the thought of all the girls hailed from the locality are indulging in the prostitution. “

26. The satisfaction of breach of public order is examined from the statutory requirement of Section 2(a) r/w explanation and

Section 3 of Act 1 of 1986. So read, this Court is of the view the 2nd respondent recorded the subjective satisfaction that the activities indulged or likely to be indulged by the detenu would result in affecting the public health and life of victims. The decisions relied on by the petitioner are not under Act 1 of 1986 and these decisions therefore are binding precedents, and having regard to the subjective satisfaction recorded by the 2nd respondent, the decisions are distinguishable and are rightly distinguished by the learned Government Pleader. Next, it is argued that the order of detention is challenged as not conforming to the ratio laid down by the Apex Court in N.Meera Rani case (7 supra) namely that the 2nd respondent did not record subjective satisfaction on the likelihood of detenu being enlarged on bail and likely to indulge in such activities of which the detenu is accused. The dates which have bearing to appreciate the said contention are on 03.07.2018, the detenu was arrested in Crime No.214 of 2018. The order of detention is passed on 11.07.2018 and served on the detenu on the same day. To the extent of the detenu being in jail is noted since the bail application is not moved by that time. Therefore, the possibility of knowing that the detenu will be enlarged on bail by the Court is not a circumstance which could be in the contemplation of detaining authority at that point of time. The detaining authority for the purpose of forming the subjective satisfaction refers to state of affair as on that date and considered whether grounds are made out for preventive detention or not. We are of the view that the detention order for not disclosing the detenu will be enlarged on bail etc., firstly is unavailable and

secondly the subjective satisfaction is recorded by taking note of the inputs given by the authority recommending the order of detention.

27. The next ground raised is that the contents of order of detention are not read over to the detenu. The material papers filed by the detenu disclose the reading over of contents and also certified by the jail authorities. This Court in the case on hand is dealing with the preventive order passed by the 2nd respondent whose jurisdiction is not challenged or questioned by the petitioner. This Court does not sit in appeal on the subjective satisfaction recorded by the 2nd respondent. Likewise, this Court is also required to protect the constitutional guarantee under Article 22 (5) of the Constitution of India in examining whether the procedural safeguards are followed by the detaining authority or not. Keeping in view the scope of the judicial review, we are satisfied that the grounds raised challenging the order of detention are not tenable and do not come within the purview of review under Article 22 of the Constitution of India or could not be said that subjective satisfaction is recorded beyond the statutory scheme of Act 1 of 1986. For the above reasons, we are of the view that grounds urged fail and W.P.No.32370 of 2018 is dismissed.

28. In view of the dismissal of Writ Petition No.32370 of 2018, by keeping in view the submission that the result in the other three writ petitions depends on the outcome of W.P.No.32370 of 2018, Writ Petition Nos.32394, 32395 and 32397 of 2018 are dismissed for the same reasons and conclusions. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date: 28.12.2018

Note: L.R. Copy to be marked.

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