

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 821 OF 2020

Rohit Gulab Sonure,
Age-20 years, Occupation-Student
residing at Achakanahalli, Tal-Jath,
Dist-Sangli.

..Petitioner

V/s

1. The State of Maharashtra,
(Through the Secretary to the Govt.
of Maharashtra (Preventive Detention,
Home Department (Special),
Mantralaya, Mumbai-400 032.
2. District Magistrate Sangli,
R/at-Office of District Magistrate,
Sangli-Miraj Road, Vijaynagar Road,
Tal-Sangli, Dist-Sangli.
3. The Superintendent of Jail,
Sangli District Jail, Sangli.
4. Police Inspector,
Jath, Police Station.
Tal-Jath, District-Sangli.

..Respondents

Mr.Abhijit Kulkarni i/b Mr.Sachin Hande, for the Petitioner.
Mr.J.P. Yagnik, APP for the Respondent – State.

**CORAM : S. S. SHINDE &
M. S. KARNIK, JJ**

**RESERVED ON : 07th OCTOBER, 2020
PRONOUNCED ON : 22nd DECEMBER, 2020**

JUDGMENT (PER M.S.KARNIK, J.) :

. By this Petition under Article 226 of the Constitution of India, the Petitioner takes an exception to the order of the detention dated 07/11/2019 issued by Respondent No.2 – District Magistrate, Sangli under section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 Act ('the said Act' for short) detaining the Petitioner for a period of one year from the date of detention.

The facts of the case in brief are :

2. It was proposed to detain the Petitioner under the provisions of the said Act by communication dated 14/10/2019 of the Police Superintendent, Sangli to Respondent No.2 – detaining authority. In exercise of powers conferred by sub-sections 3(1) & (2) of the said Act, the detaining authority issued the impugned

detention order on 07/11/2019. The said detention order needed approval of the State Government under section 3(3) of the said Act. A report was accordingly submitted by the detaining authority to the State Government on 13/11/2019. The detention was approved by the State Government on 13/11/2019. The said order of detention was executed under section 4 of the said Act on 18/11/2019. A reference was made to the Advisory Board on 21/11/2019. The opinion of the Advisory Board was received on 18/12/2019 by the Government. The report and proceedings of the Advisory Board was duly considered by the Government on 20/12/2019 and the order of detention came to be confirmed by the Government on 21/12/2019.

The detention of the Petitioner according to the detaining authority was necessitated because the Petitioner's criminal record shows that he is a dangerous person and weapon wielding desperado indulging in dangerous activities. The Petitioner has taken to a life of crime and unleashed a reign of terror in the jurisdiction of Jath Police Station and thereby has become a continuous danger to the life and property of the people residing and carrying out their daily business in the said area. According to the detaining authority, the Petitioner, along

with his associates are moving around in the above areas armed with lethal weapons like knives and swords, threatening and assaulting people and involved in the commission of offences of assault and damage to the articles, victimizing and terrorizing innocent people. The Petitioner is involved in offences of grievous hurt, simple injury, stabbing, robbery, extortion. The Petitioner does not hesitate to use weapons while committing offences of assault. The Petitioner's activities are causing alarm and insecurity among the general public. The Petitioner was arrested on 17/09/2019 in connection with C.R. No. 76 of 2019 for the offence punishable under sections 4 and 25 of the Arms Act and under section 37(1)(3) of the Maharashtra Police Act. When the search of the Petitioner and his accomplice was taken on 17/09/2019, he was found with deadly weapons like kukari, sword and stick. The statements of the witnesses were recorded supporting the facts of the incident in the crime.

During the confidential enquiry on the condition of the non-disclosure of the name and identity, two victimized persons stated regarding atrocities committed by the Petitioner against them. The in-camera statements of the witnesses A & B came to be recorded. The said statements read thus :

"i) Witness "A" – Witness 'A' in his statement state that, one day in the running month's first week at 7.30 p.m. he standing near his shop which is situated near the Shivaji Statue. At that time you along with your accomplice came near where he was standing "Asked him do you know⁸²¹ who I am ? I am M.W. (Madhya Waghmode) gang person. You have a shop section. You asked him to give 2 thousand rupees for party" that time he said that at present I have no money, then you raise scythe which was kept in motorcycle and kept scythe on his neck and threaten him, you saying me no money, that by this scythe you will be beheaded & beated him below the ear. At that time his friend talking with him escaped from that place, you scuffling with him in that time you inserted your hand in his shirt pocket taken rupees 1200/- & threatened him that if you made any complaint against me I will cut down your leg & hand. After this you & your accomplice ran away from that place. Due to fear & threat given by you and also because of your terror he has not reported this incident to police. Due to terror of you and your accomplice general people not living fearless life and also you are dangerous to their life and property.

ii) Witness – B – Witness 'b' in his statement state that, as he is residing in Jath he knows the criminals in Jath City and nearby villages. He also knows you because of your two to three years criminal activities. You always along with your accomplice wondering with weapons. You are not doing any work. You by bullying to spared your terror. Many cases registered against you in Jath Police Station Police arrested in that crime but that was not lower your bullying. Due to fear of you and your terror many times people were not lodging complaint against you. Police were arresting you & after release on bail you also repeating to commit crime. One & half month before when he was in a betel stall you & your accomplice came their at 8.30 pm

& asked him cigarette. He given cigarette pocket to you & asked money, then you abused him that "Randacha asking money to me do you know who am I ? He said that you have not paid money many times on that count you beaten him at below the ear and raise the knife from your pocket and told him that if you asked money from me then I will kill you" also abused him loudly, at that time people standing near the betel stall went away from that place. Thereafter in that temper you break down the Jars & disrupt the materials and threatened him that "if you made complaint in police station against me then I will burn alive you in chawk". After this you along with your accomplice left the place. Due to fear of doing any tragedy & also your terror he has not made any complaint against you in police station about the said incident. From that incident he closed his betel stall due to terror of you & your accomplice's. General people not living fearless life and also you became dangerous to their life and property."

3. The said statements of the witnesses A & B are verified by Shri Sandip Singh Gill, Sub-Divisional Police Officer, Miraj Sub-Division, Miraj who is a gazetted officer and even the detaining authority verified them and was satisfied with the same.

4. In order to curb the Petitioner's criminal activities, the Special Executive Magistrate Police Headquarters, Sangli on the proposal of Jath Police Station under section 110(e) and (g) of CrPC took action against the Petitioner under section 116(3) of

CrPC on 15/03/2019 and good behavior bond was directed to be submitted. Despite submission of the bond, the Petitioner committed serious criminal offences.

5. The detaining authority then took into consideration the past history which reflected that the Petitioner does not have any respect for law and has tendency to commit offences repeatedly and frequently without any fear of law. The following are the offences registered against him.

“i) CR No. 69/2016 at Jath PS under sections 326, 323, 34 of IPC, 4, 25 of the Indian Arms Act, 1959;

ii) Part VI CR. NO. 64/2016 at Jath PS under sections 4, 25 of the Indian Arms Act, 1959;

iii) Part VI CR NO. 76/2016 at Jath PS under section 4, 25 of the Indian Arms Ac, 1959;

iv) CR. NO. 37/2017 at Jath PS under sections 4, 25 of the Indian Arms Act 1959, which are pending before the Court of Law;

v) CR.NO.273/2018 at Jath PS under sections 143, 147, 148, 149, 324 of IPC, 4, 25 of the Indian Arms Act 1959;

vi) CR NO. 342/2019 at Jath PS under sections 143, 147, 148, 149, 365, 324, 323, 504, 506 of IPC;

vii) CR NO. 346/2019 at Jath PS under sections 387, 427, 504, 506, 34 of IPC, 4, 25 of the Indian Arms Act, 1959 and

viii) C.R.No. 76/2019 at Jath PS under sections 4, 25 of the Indian Arms Act 1959, r/w 37(1)(3), 135 of Maharashtra Police Act, which is under investigation. ”

6. Having gone through the materials on record, the detaining authority was subjectively satisfied that the Petitioner is acting in a manner prejudicial to the maintenance of public order. The detaining authority was satisfied that the Petitioner is likely to revert to the similar activities prejudicial to the maintenance of public order in future in view of his tendencies and inclinations reflected through the offences committed by him and previous actions taken against him under various prevailing enactments which are not sufficient to control his criminal activities. The detaining authority found it necessary to detain him under the provisions of the said Act to prevent him from acting in such a prejudicial manner in future.

7. The Petitioner was informed that he has a right to make a representation to the State Government against the detention order and that he shall be afforded an earliest opportunity to make such representation. The Petitioner was informed that if he intends to make such a representation, he may do so by addressing it to the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai.

8. The Petitioner was further informed that pending approval of the detention order under section 3(3) of the said Act

by the State Government, the Petitioner has a right to make a representation to the detaining authority against the detention order.

9. The Petitioner has challenged the detention order on grounds A to P mentioned in the memo of Petition. During the course of the hearing, learned Counsel for the Petitioner restricted his challenge to the following grounds which he formulated as under :

“(a) Whether the impugned order as well as decision making process of detention discloses the subjective satisfaction of the detaining authority as mandated in the Judgment of Hon’ble Bombay High Court delivered in the matter of **Vijay Raju Gupta Vs. State of Maharashtra 2001 (1) Mh.L.J. 449** ?

(b) Whether it is sustainable to forfeit chance of representation of the petitioner without assigning any reason?

(c) Whether the Grounds of Detention refers to stale incidences and Whether the incidences of in-camera witnesses falls within an ambit of Section 2(a)(iv) of MPD Act ? In other words, Whether the Grounds of Detention able to justify that the petitioner was required to be detained with a view to prevent Petitioner from acting prejudicial to the maintenance of public order.

(d) Whether the impugned order and the decision making process are sustainable in law; if, the authorities exercised discretion for detention of one year without assigning any reasons to fix such period of detention ? “

Point (a) :

10. We propose to deal with these grounds of challenge to the detention order at seriatim. So far as the first ground pressed by learned Counsel for the Petitioner that the detention order does not disclose the subjective satisfaction of the detaining authority is concerned, learned Counsel for the Petitioner would submit that grounds of detention do not reflect the subjective satisfaction of the Respondent No.2 - detaining authority about the truthfulness of in-camera statements and the detaining authority did not personally verify the truthfulness of the in-camera statements. According to the learned Counsel for the Petitioner even the facts mentioned in the grounds for detention would reveal that in-camera statements have been verified by one Shri Sandip Singh Gill, Sub-Divisional Police Officer, Miraj Sub-Division, Miraj whereas in the present case, the detaining authority i.e. Respondent No.2 is Shri Abhijeet Choudhari (District Magistrate of Sangali). This forms the basis of the submission of the learned Counsel for the Petitioner that the decision making process of the detention does not disclose the subjective satisfaction of the detaining authority as mandated by this Court in the case of **Vijay Raju Gupta Vs. State of Maharashtra 2001 (1) Mh.L.J. 449.** Relying on paragraph 6 of the said decision, learned Counsel would submit

that it is the detaining authority who has to be satisfied about the truthfulness of the statements made in the in-camera statements. He would submit that mere verification is not sufficient but there has to be something more by way of contemporaneous documents or material, in the absence of which the in-camera statements cannot be believed to be true. Learned Counsel would submit that the detaining authority has not applied his mind to the truthfulness of the assertions made in in-camera statements and therefore, detention order is vitiated.

11. Learned APP would invite our attention to the affidavit-in-replies filed on behalf of the Respondents. Mr.Yagnik took us through the detention order to demonstrate that subjective satisfaction of the detaining authority is based on the materials on record. Mr.Yagnik would rely upon the decision of the Hon'ble Supreme Court in the case of **Phulwari Jagdambaprasad Pathak (Smt.) Vs. R.H.Mendonca and ors. (2000) 6 Supreme Court Cases 751** to support his submission.

Having heard learned Counsel for the parties on this point, we are satisfied that the detention order cannot be faulted on this ground. The Hon'ble Supreme Court in Phulwari's case held that if a person is found to be repeatedly engaged in such

activities as mentioned in sub-sec 2(b-1) of the said Act which affect adversely or are likely to affect adversely the maintenance of public order, he can be detained as a dangerous person in exercise of the power under section 3 of the said Act. In paragraph 16 it is observed by Their Lordships that though the preventive detention is harsh, but it becomes necessary in the larger interest of society and that for the purpose of exercise of the power, it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act.

12. In our opinion, we find that the materials available on record as sufficient for the detaining authority to feel reasonably satisfied about the necessity for detention of the detenu in order to prevent him from indulging in activities prejudicial to the maintenance of public order. The detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved which we enumerated in paragraph 5 of this order. The satisfaction thus, was not based on a single or stray incident. There is therefore no merit in this contention.

Point (b) :

13. The next ground urged by learned Counsel for the Petitioner is that detention order is not sustainable as the Petitioner has been deprived of chance of making a representation against the detention order to the State Government. Learned Counsel would submit that the detention order came to be executed on 18/11/2019. The same was approved by the State Government on 13/11/2019 and in the order of approval, it is specifically mentioned that a chance of representation which was granted by the detaining authority stood forfeited. Learned Counsel would submit that the right to make a representation is an express right conferred by section 8 of the said Act and therefore, the State Government was not justified in depriving the Petitioner from exercising this right. Learned Counsel for the Petitioner contended that though the detaining authority has mentioned that an earliest opportunity will be made available to him to make the representation, no such opportunity has been afforded to the detenu.

14. Learned APP submitted that the Petitioner was not deprived of his right to make a representation under section 8 of the said Act. According to him he never availed of his right to make a representation under section 8. It is the Petitioner who

has failed to make a representation to the State Government. Despite communicating the grounds on which the detention order has been made, the Petitioner has not made any representation against the order to the State Government.

15. To deal with the submissions of the learned Counsel for the Petitioner, it will be material to note that in the order of detention, the detaining officer had informed the detenu that he has a right to make a representation to the State Government against the detention order and that the detenu shall be afforded an earliest opportunity to make such representation. It was also specified that in case the detenu intends to make such a representation, he may do so to the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai and submit it through the Superintendent of jail where the detenu has been detained. This statutory right of making a representation is prescribed under section 8 of the said Act which reads thus :

“8. (1) 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 State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.”

16. Reading of section 8 would go to show that the detaining authority has to communicate the grounds of the detention on which the order has been made as soon as may be, but not later than five days from the date of detention and shall afford him the earliest opportunity of making a representation against the order to the State Government. The Petitioner-detenu was detained on 18/11/2019 and on the very same day, grounds on which order of detention was made was communicated to him. The order is specific in as much as he was informed that if he intends to make a representation, the same should be addressed to the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai and submit it through the Superintendent of jail where the detenu has been detained. The argument of learned Counsel that the detenu has not been granted an opportunity to make a representation to the State Government against the order of detention does not therefore merit any consideration. Despite knowledge, the detenu did not avail of this opportunity. The Petitioner has nowhere stated in

the Petition that he has made a representation either to the detaining authority or to the State Government.

17. Again, there is basic fallacy in the argument of learned Counsel for the detenu that the approval order dated 13/11/2019 of the State Government is vitiated as the right of the Petitioner mentioned in paragraph 10 of the grounds of detention to represent against the detention to the detaining authority i.e. District Magistrate, Sangli stands terminated. Clause 10 of the detention order reads thus :

“10) I further inform you that pending approval of this Detention Order under section 3(3) by the State Government, you have a right to make a representation to me as the Detaining Authority i.e. District Magistrate, Sangli against the Order of Detention. If you intend to make such a representation, you should address it to the District Magistrate, Sangli office of the District Magistrate, Sangli. The date, on which Government approves the order, it will be communicated to you in the Jail through the Superintendent of the Jail, where you have been detained. On approval of the detention order by Government under section 3(3) of the said Act, the right of representation to the detaining authority will automatically extinguish. “

18. A reading of section 3 of the said Act goes to show that the order of the detaining authority passed under sub-

section 3(2) needs to be approved by the State Government under sub-section 3(3). The said detention order made under section 3(2) cannot remain in force for more than 12 days after the making thereof, unless, in the meantime, it has been approved by the State Government. In terms of section 3, the detaining authority did inform the Petitioner that he has a right to make a representation to the detaining authority i.e. Respondent No.2 against the order of the detention. The detenu was further informed that right of representation to the detaining authority will automatically extinguish on approval of the detention order by the State Government under section 3(3) of the said Act. Thus, detenu was appraised of his right to make a representation to the detaining authority. Despite knowledge, the detenu did not avail of the opportunity of making a representation to the detaining authority before the approval of the detention order by the State Government.

19. It is the detenu who failed to avail of the opportunity.

The right to make the representation to the detaining authority is pending approval of the detention order under section 3(3) of the said Act by the State Government. In terms of section 3(3) of the said Act, on approval by the State Government to the detention order, right of representation to the

detaining authority automatically extinguishes. The detenu was so informed. In these circumstances, if the detenu has not availed of an opportunity of making a representation to the detaining authority after detention order is made but prior to the approval of the State Government, we do not find any error in the stand taken by the detaining authority that the right to make a representation to the detaining authority will automatically extinguish after the approval of the detention order by the State Government under section 3(3) of the said Act. We have already noticed that even on the approval of the detention order by the State Government under section 3(3) of the said Act, the detenu has a right to make a representation to the State Government, which has not been availed of by the detenu though he was informed about the same. Therefore, there is no merit in the contention of learned Counsel for the petitioner that the detenu's chances of making representation is forfeited without any reason.

Point (c) :

20. So far as the challenge to the order of the detention on ground (c) formulated hereinbefore, learned Counsel invited our attention to the detention order at page 22 which records that 'petitioner is detained with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of

public order'. Learned Counsel would submit that the action of detention is based on anticipation of future activities of the petitioner. According to him, past incidents of 8 offences in which bail is granted are stale incidents for the purpose of detention. Learned Counsel would therefore submit that the order of detention referred to stale incidents and the alleged incident of in-camera statements of the witnesses also do not fall within the ambit of section 2(a)(iv) of the said Act.

21. Learned APP has relied upon the decision of this Court in the case of **Santosh Kashinath Kamble** (*supra*) in the Criminal Writ Petition NO. 4510 of 2015 in support of his contentions. He also relied upon the decision of the Apex Court **Phulwari Jagdambaprasad Pathak** (*supra*). Learned APP would submit that on the basis of series of contemporaneous criminal activities in which the detenu was involved as disclosed by the victims/witnesses in the in-camera statements, detaining authority arrived at the subjective satisfaction that the detention of the detenu is warranted. Learned APP also relied upon the decision in the case of **Mrs.T.Devaki** (*supra*).

22. We have gone through the in-camera statements of the witnesses. From the grounds of detention, it is seen that the

detaining authority has considered the detenu's involvement in the incidents of immediate and recent origin. These are extensively referred to in the detention order. Further it cannot be said that any of the incidents relating to in-camera statements are stale. The incidents in respect of which the statements of witnesses are recorded are around one and half months old. These incidents cannot be said to be stale incidents. Moreover, the in-camera statements of the witness are verified by Sandeep Singh Gill, Sub Divisional Police Officer, Miraj Sub Division, Miraj. The detaining authority verified these witnesses and thereupon passed the detention order. We are therefore of the opinion that subjective satisfaction is based on the incidents of immediate and recent origin.

23. We are in agreement with the learned APP Shri Yagnik that in the instant case, incidents which are not of the immediate past are not relied upon but the past history is referred to only to indicate the activities indulged in by the detenu. It is necessary to make a reference to the decision of the Apex Court in the case of **Phulwari Jagdambaprasad Pathak** (*supra*), paragraphs 15 to 17 of which read thus :

“15. The detention order against the appellant herein was passed on the allegation that he was persistently engaged in

criminal activities which adversely affected the maintenance of public order in the localities, and therefore, with a view to prevent him from engaging in such activities it was necessary to preventively detain him under the provisions of the Act. For consideration of the question whether the appellant could be said to be a dangerous person, it is necessary to read the definition of the term in Section 2(b-1) and the provision of Section 2(a)(iv) regarding the meaning of the term "acting in any manner prejudicial to the maintenance of public order". Under the explanation under Section 2(a)(iv) it is provided that public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely if any of the activities of any of the persons referred to in the clause directly or indirectly, is 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. The deeming clause in the explanation widens the scope of the provision in Section 2(a)(iv). It follows that if a person found to be repeatedly engaged in such activities as mentioned in Section 2(b-1) which affect adversely or are likely to affect adversely the maintenance of public order he can be detained as a dangerous person in exercise of the power under Section 3 of the Act.

16. Then comes the crucial question whether 'in-camera' statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under Section 3 of the Act. Preventive detention measure is a harsh, but it becomes necessary in the larger interest of society. It is in the nature of a precautionary measure

taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve, the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.

17. From the grounds of detention and the papers enclosed with it, copies of which were served on the detenu it is clear that the detaining authority based his subjective satisfaction on a series of contemporaneous incidents in which the detenu was involved. The satisfaction was not based on a single or stray incident. In the in- camera statements, separate incidents of criminal activities of the detenu were stated. The assertions are not assailed as untrue nor can they be said to be irrelevant for the purpose of the order. On such materials on record it cannot be said that there was no basis for the detaining authority to feel satisfied that the detenu was either himself or as a member or

leader of a gang habitually committed or attempted to commit or abetted the commission of any of the offences stated in Section 2(b-1). Therefore, the contention raised by learned counsel for the petitioner that the conclusion arrived at by the detaining authority that the detenu was a 'dangerous person' within the meaning of Section 2(b-1) was vitiated cannot be accepted. In our view the detention order under challenge does not suffer from any infirmity.”

24. We are satisfied that the incidents referred to are not stale and subjective satisfaction of the detaining authority is based on series of contemporaneous incidents in which detenu was involved which included the in-camera statements of witnesses. The conclusion of the detaining authority that detenu was a 'dangerous person' within the meaning of section 2(b-1) cannot be faulted. We therefore do not find any merit in the contention of learned counsel for the Petitioner even on this ground.

Point (d) :

25. Learned Counsel for the Petitioner then pressed into service the ground that detention order is vitiated as the authority exercised discretion arbitrarily detaining the Petitioner for one year without assigning any reason to fix such period of detention. Learned counsel would submit that as the period of

detention is not specified, he will have to undergo the maximum period of detention prescribed in the 'Act' which is arbitrary. Learned Counsel would urge that in the entire order of detention, there is no reason assigned as to why the Petitioner is to be detained for the maximum period and not for lessor period. He would contend that section 12 of the said Act empowers the State Government to detain the person for the maximum period of one year but that does not mean that State Government should have exercised this power to detain the Petitioner for maximum period of one year without any rational or without assigning any reason to do so. The Petitioner has a right to know as to what is rational or reason why he is required to undergo detention for the maximum period of one year and not for a lessor period. According to learned Counsel this is against the principle that the sentence imposed by the Court or by such authority appointed by law should never exceed the concept of proportionality. The sentence has to be proportionate to the gravity of the crime considered in the light of the objective circumstances.

26. This argument of the Petitioner need not detain us any further in view of the decision of the Apex Court in the case of **Mrs.T.Devaki Vs. Government of Tamil Nadu 1990(2)**

SCC 456. A reference to paragraphs 14 & 15 of the said decision is a complete answer to the submission of the learned Counsel for the Petitioner. Paragraphs 14 & 15 read thus :

"14. In A.K.Roy V. Union of India a Constitution Bench of this Court considered the validity of the National Security Act (65 of 1980), Chandrachud, CJ (as he then was) speaking for the bench rejected the arguments made on behalf of the petitioner that the absence of provision requiring the detaining authority to provide for maximum period of detention was illegal. The learned Chief Justice, observed: (SCC pp.324-25, para 77)

"There is no substance in this grievance because, any law of preventive detention has to provide for the maximum period of detention, just as any punitive law like [the Penal Code](#) has to provide for the maximum sentence which can be imposed for any offence. We should have thought that it would have been wrong to fix a minimum period of detention, regardless of the nature and seriousness of the grounds of detention. The fact that a person can be detained for the maximum period of 12 months does not place upon the detaining authority the obligation to direct that he shall be detained for the maximum period. The detaining authority can always exercise its discretion regarding the length of the period of detention. It must also be mentioned that, under the proviso to [Section 13](#), the appropriate Government has the power to revoke or modify the order of detention at any earlier point of time."

On the basis of the above observations validity of a detention order passed under [Section 3](#) of the National Security Act was challenged before this Court in [Ashok Kumar v. Delhi Administration & Ors.](#), on the ground that the Commissioner of Police, as well as the Administrator of Delhi Administration who

confirmed the detention order failed to specify the period of detention while making the order of detention. A three Judge's bench of this Court rejected the detention and upheld the validity of the detention order. A.P. Sen, J. observed: (SCC pp. 408-09, para 11)

"It is plain from a reading of [Section 3](#) of the Act that there is no obvious fallacy underlying the submission that the detaining authority had the duty to specify the period of detention. It will be noticed that sub-section (1) of [Section 3](#) stops with the words "make an order directing that such person be detained", and does not go further and prescribe that the detaining authority shall also specify the period of detention. Otherwise, there should have been the following words added at the end of this sub-section "and shall specify the period of such detention". What is true of sub-section (1) of [Section 3](#) is also true of sub-section (2) thereof. It is not permissible for the courts, by a process of judicial construction, to alter or vary the terms of a section. Under the scheme of the Act, the period of detention must necessarily vary according to the exigencies of each case i.e. the nature of the prejudicial activity complained of. It is not that the period of detention must in all circumstances extended to the maximum period of 12 months as laid down in [Section 13](#) of the Act."

15. It is thus clear that the view taken in Gurbux Biryani's case on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in the order the detenu is required to be under

detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention. We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining authority's failure to specify period of detention in the order."

27. It is therefore clear that it is not necessary for the detaining authority to specify the period of detention in the order. Even in the absence of the period being specified in the detention order, the detenu is required to be under detention for the maximum period prescribed under the Act, but it is also always open to the State to modify or revoke the order even before the completion of the maximum period of detention. Having regard to the settled position of law, we are therefore of the opinion that the impugned order of detention is not rendered illegal on account of detaining authority's failure to specify the period of detention in the order.

28. In our view, the detention order under challenge does not suffer from any infirmity.

29. Writ Petition is therefore devoid of any merit. The same is dismissed.

30. This judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)