

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 301 OF 2021

Baban S/o Bhagaji Makale,
Age : 35 years, Occ : Labour,
R/o Near Nyanganga School,
Mukundnagar, Mukundwadi,
Aurangabad.

... Petitioner

Versus

1. The State of Maharashtra
Through Deputy Secretary,
Home Department, Mantralaya,
Mumbai -32.

2. The State of Maharashtra
Through Police Commissioner,
Aurangabad.

3. The State of Maharashtra
Through Superintendent,
Central Jail, Aurangabad.

... Respondents

.....

Mr. Rupesh A. Jaiswal, Advocate for the Petitioner.

Mr. Sachin J. Salgare, APP for Respondents.

.....

CORAM : V. K. JADHAV AND

S. G. DIGE, JJ.

RESERVED ON : 07.07.2021

PRONOUNCED ON : 31.08.2021

ORDER (PER V. K. JADHAV, J.) :

1. By this petition, the petitioner-detenu is challenging the detention order dated 20.11.2020 passed by respondent no.2-Police

Commissioner, Aurangabad, in exercise of powers conferred by sub-section (1) of section 3 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 (for short, "MPDA Act").

2. Learned counsel for the petitioner-detenu submits that the impugned detention order is passed on the basis of four crimes and two in-camera statements, details of which are given in tabular form in para 3 of the petition. Learned counsel submits that the order passed by respondent no.2 is bad in law. Respondent no.2 has not arrived at a subjective satisfaction that the activities of the petitioner-detenu are prejudicial to the maintenance of public order. Learned counsel submits that if the petitioner's crime history is considered, the activities of the petitioner-detenu at the most would create a problem of 'law and order' and not 'public order' because the maximum offences alleged to have been committed by the petitioner are punishable under section 380 of IPC. The petitioner is not a dangerous person as defined in the MPDA Act. Respondent no.2 has failed to consider this aspect and thus, the

impugned order is liable to be quashed and set aside. Learned counsel submits that most of the crimes came to be registered against unknown persons. These offences if taken together, are not affecting the public order in any manner. Learned counsel submits that respondent no.2 has considered extraneous material while passing the detention order. Learned counsel submits that the detaining authority communicated to the petitioner the grounds mentioned in para 4 and 5 of the Grounds of Detention and further stated that relying on the documents which were placed before him, he has formed subjective satisfaction. Learned counsel submits that the compilation of all the documents, which runs into 306 pages as per the index of the compilation, was placed before the detaining authority and the same was considered by the detaining authority to formulate the grounds of detention. However, in the detention order and particularly in para 4 of the grounds of detention, it is clearly spelt out that the detaining authority has taken into consideration the material as discussed in para 4 and 5 to pass the detention order.

3. Learned counsel for the petitioner submits that the detaining authority has taken into consideration the extraneous material

which indicates non-application of mind. Learned counsel submits that the detaining authority is also required to consider the orders granting bail to the detenu in the offences that are pending against him. Non-placing and non-consideration of the bail order would vitiate the subjective satisfaction of the detaining authority. Learned counsel submits that the liberty of a person cannot be subverted casually by the executive authority by taking resort to extra-ordinary route barring cases where justification for doing so exists independently of bail order.

4. Learned counsel for the petitioner submits that the detaining authority has belatedly passed the detention order by more than two months. The last date of the incident was 27.08.2020, whereas the detention order came to be passed on 20.11.2020. Learned counsel submits that the object of the MPDA Act is to provide immediate detention of a dangerous person as defined under the Act. Thus, the impugned order is liable to be quashed and set aside on this ground also.

5. Learned counsel for the petitioner further submits that there is considerable delay in providing the grounds of detention to the

petitioner. The petitioner-detenu is to be given earliest opportunity to make representation against the order of detention. There is also delay in sending the detention order to the State Government.

6. Learned counsel for the petitioner, in order to substantiate his contention, placed his reliance on the following cases:

1. *Pawan Tukaram Kudale v. The Commissioner of Police, Pune & Ors.*, reported in 2019 All MR (Cri) 503.
2. *Hanuman Rajaram Mhatre v. The Commissioner of Police, Thane & Ors.*, reported in 2019 All MR (Cri) 492.
3. *Kiran Dhanraj Kharat v. The Commissioner of Police, Pune & Ors.*, reported in 2018 All MR (Cri) 4269.
4. *Ganesh @ Ganya Shamrao Pendor v. State of Maharashtra & Anr.*, reported in 2019 All MR (Cri) 700.
5. *Rushikesh Tanaji Bhoite v. State of Maharashtra & Ors.*, reported in 2012 ALL SCR 1373.
6. *Sayed Jafar Sayed Nasir v. State of Maharashtra & Ors.*, reported in 2019 All MR (Cri) 1236.

7. ***Mrs. Hamida Salim Khan v. Commissioner of Police & Ors.***, reported in 2013 All MR (Cri) 3912.
8. ***Niyazuddin @ Sonu Sirajuddin Ansari v. State of Maharashtra & Anr.***, reported in 2013 All MR (Cri) 3870.
9. ***Yogesh Nandu Pujari v. Commissioner of Police, Thane & Ors.***, reported in 2013 All MR (Cri) 1779.
10. ***Bhupendra v. State of Maharashtra & Anr.***, reported in 2008 All MR (Cri) 2285 (S.C.).
11. ***Smt. Icchu Devi Choraria v. Union of India and Others***, reported in 1980 All MR Online 436 (S.C.).
12. ***Ram Manohar Lohia v. The State of Bihar & Another***, reported in 1965 All MR Online 375 (S.C.).

7. Learned APP submits that sufficiency or insufficiency of the grounds in the detention order cannot be a subject matter on the basis of which the petition could be entertained under Articles 226 and 227 of the Constitution. It is the subjective satisfaction of the detaining authority that the acts of the detenu are prejudicial to the maintenance of public order and with a view to prevent him from

committing such acts, detention is necessary, are the relevant considerations.

8. Learned APP submits that the petitioner is a dangerous person as defined in the MPDA Act. The petitioner has committed serious offences like theft, house-breaking by night and robbery. Learned APP submits that as a result of his dangerous activities, the persons residing within the local jurisdiction of the Mukundwadi Police Station and the adjoining areas remain under constant fear and terror. The illegal and dangerous acts of the petitioner have become a serious threat and source of danger to the lives of law abiding and peace loving citizens of the Aurangabad city and has become threat to the public order. The activities of the petitioner have become hazardous and prejudicial to the maintenance of public order in the area of Mukundwadi Police Station, Aurangabad and the adjoining areas.

9. Learned APP submits that after considering the seriousness of the aforesaid crimes, the Police Inspector of Mukundwadi Police Station conducted confidential inquiry. In inquiry it revealed that due to his fear, nobody is coming forward to give statement openly

against him. With assurances of keeping names and identity secret and that they would not be called upon to give evidence against the petitioner-detenu in any court or any other open forum, two witnesses have come forward and disclosed his acts. The Police Inspector of Mukundwadi Police Station recorded statements of witnesses "A" and "B" in camera. After completion of the confidential inquiry, on 10.11.2020, the Police Inspector of Mukundwadi Police Station has submitted the proposal to the detaining authority i.e. respondent no.2 for taking action under section 3(1) of the MPDA Act through concerned Assistant Commissioner of Police, Osmanpura Division, Aurangabad and the Deputy Commissioner of Police, Zone-II, Aurangabad. After perusal of the said proposal along with the documents, the Assistant Commissioner of Police, Osmanpura Division, Aurangabad forwarded it to the Deputy Commissioner of Police, Zone-II, Aurangabad on 13.11.2020. Thereafter, The Deputy Commissioner of Police, Zone-II, Aurangabad had verified the witnesses "A" and "B" and submitted report to respondent no.2 on 17.11.2020.

10. Learned APP submits that having considered the crimes registered against the petitioner and the in-camera statements of

the witnesses, the detaining authority got convinced that the petitioner is a dangerous person as defined under the MPDA Act as the petitioner has committed offences falling under Chapter XVII of the Indian Penal Code.

11. Learned APP submits that after having subjective satisfaction, the detaining authority has passed the detention order on 20.11.2020 and on the same day it was served on the petitioner and he was lodged in Aurangabad Central Prison, Aurangabad. Learned APP submits that the grounds of detention and other relevant papers along with its Marathi translation were served on the petitioner on 23.11.2020 in time. Thereafter, on the same day, a detailed report along with the detention order, grounds of detention and the relevant documents were submitted to the Additional Chief Secretary, Home Department, Mantralaya, Mumbai for approval under section 3(3) of the MPDA Act. After receipt of the said report, the State Government has approved the order of detention on 25.11.2020. Learned APP submits that the Advisory Board constituted under the MPDA Act heard the petitioner on 04.12.2020. After receipt of the opinion from the Advisory Board, the detention order was confirmed by the State

Government vide its order dated 10.12.2020. Learned APP submits that there is no delay in passing the order and submitting the report to the State Government. All the mandatory provisions in this regard have been complied with in the stipulated period.

12. Learned APP, in order to substantiate his contention, placed his reliance on the following cases.

1. *T. Devaki v. Government of Tamil Nadu and Others*, reported in (1990) 2 SCC 456.
2. *Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department and Another v. Kamala and another* reported in (2018) 5 SCC 322.
3. *Tushar v. The State of Maharashtra and Ors.*, reported in 2017 All MR (Cri) 3690.
4. *Siddhesh Bala Mhaskar v. The Commissioner of Police, Thane and Ors.*, reported in 2020 (2) Bom CR (Cri) 397.
5. *Anna Durai and Ors. v. A. N. Roy and Ors.*, reported in 2006 (108(4)) Bom LR 3397.

6. *Santosh v. The State of Maharashtra and Ors.*, reported in 2013 All MR (Cri) 3846.
7. *Istiyak Ahmed Siddiqui v. A. N. Roy and Ors.*, reported in 2005 Cri. LJ 3637.
8. *Abdul Nasar Adam Ismail through Abdul Basheer Adam Ismail v. State of Maharashtra and Ors.*, reported in AIR 2013 SC 1376.
9. *Hemlata Kantilal Shah v. State of Maharashtra and Ors.*, reported in AIR 1982 SC 8.
10. *Amar @ Amarsingh Gulabsingh Rathod v. State of Maharashtra, through Secretary and Another*, reported in 2003 Bom CR (Cri) 1573.
11. *Dhanji Ram Sharma v. Superintendent of Police, North Dist, Delhi Police and Ors.*, reported in AIR 1966 SC 1766.
12. *The Collector and District Magistrate, W.G. Dist. Eluru, Andhra Pradesh and Ors. v. Sangala Kondamma*, reported in AIR 2005 SC 1165.
13. *Sunil Fulchand Shah v. Union of India (UOI) and Ors.*, reported in AIR 2000 SC 1023.

13. We have heard learned counsel for the petitioner and the learned APP for the respondent State. With their able assistance, we have perused the memo of the petition, annexures thereto, the police papers and the cases cited by them.

14. On careful perusal of the impugned order, it appears that the detaining authority has relied on the four crimes and two in-camera statements. Though we find that crime nos. 311/2020, 317/2020 and 348/2020 came to be registered for the offences punishable under sections 380, 461 and 379 of IPC, however, those offences have been committed in quick succession. So far as crime no. 311/2020 registered with Cidco Police Station is concerned, the date of its registration is 21.05.2020. Crime No. 317/2020 came to be registered with Cidco Police Station for the offences punishable under sections 380 and 461 of IPC and the date of its registration is 27.05.2020. Crime No. 348/2020 came to be registered with Mukundwadi Police Station for the offence punishable under section 379 of IPC of which the date of registration is 10.08.2020. Further, crime no. 370/2020 came to be registered with Mukundwadi Police Station for the offence punishable under sections 394 and 34 of IPC, of which the date of registration is

27.08.2020. Learned counsel for the petitioner has mainly assailed the impugned order on the ground that most of the crimes have been registered against unknown persons. However, we find no substance in it.

15. Crime no. 311 of 2020 came to be registered on the basis of the complaint lodged by one Mirza Aslam Baig at Cidco Police Station. Said Mirza Aslam Baig has alleged in the complaint that on 21.05.2020, between 07.30 to 08.00 hrs., when he was at his home, he received a message that one unknown person has broken the shutter of his Oppo company's service centre. On reaching to the shop, he found that some unknown person had broken the shutter of his shop, entered into it and stolen seven Oppo make new mobile handsets and one old and used mobile handset of a customer, of the total price to the tune of Rs.1,50,000/-. During the course of investigation, certain accused persons came to be arrested in connection with the said crime. The petitioner came to be arrested on 09.06.2020 and one stolen mobile handset and one auto rickshaw used while committing the said offence came to be seized from his possession.

16. Another crime bearing no. 317/2020 again came to be registered in quick succession and with identical facts involving a different shop by name Balaji Telecom which was broken by unknown persons. The petitioner came to be arrested in connection with this crime also. It appears that four stolen mobile handsets came to be recovered from the associate of the petitioner, namely, Akash Ashok Jadhav.

17. Crime No. 348/2020 pertains to the theft of one Hero Honda Passion Pro motorcycle. The other crime bearing no. 370/2020 came to be registered on 27.08.2020, on the basis of the complaint lodged by one Shubham Bhikulal Jat. He was robbed by the petitioner along with his associate. During the course of investigation of this crime registered for the offence punishable under sections 394 and 34 of IPC, the said Hero Honda motorcycle in connection with crime no. 348/2020, as referred above, came to be recovered from the possession of the petitioner.

18. We have carefully perused the in-camera statements of the witnesses "A" and "B". In the last week of October, 2020, when witness "A" was proceeding from Cidco bus stand to Sajaynagar,

the petitioner accosted him near API corner and threatened him by resting a knife on his chest and forcibly removed cash of Rs.3200/- from his shirt pocket. Though witness "A" raised hue and cry, no one could dare to come forward for his help. The petitioner while fleeing away from the spot, threatened witness "A" that if he discloses the information to the police, he would burn him alive. Out of fear of reprisal, witness "A" did not report the matter to the police.

19. Further, witness "B" has complained that in the first week of November 2020, on a day at about 20.00 hrs., when he was returning to his house, near the corner of Dhoot Hospital, by threatening him the petitioner has forcibly removed cash of Rs.1850/- from his shirt pocket and abused him. Further, while fleeing away from the spot, the petitioner threatened him that if he discloses the incident to the police, he would send him to the upper world. It is reported by witness "B" in his statement that out of fear and terror of the petitioner, the nearby residents closed the doors and windows of their houses.

20. It appears that even though the petitioner was on bail in connection with the earlier crimes which were committed in quick succession, the petitioner's activities could not be curbed by enforcing the provisions of law. Consequently, it is no more a question of law and order, but it is a threat to the public order.

21. Learned counsel for the petitioner has relied upon four cases, i.e. *Pawan Tukaram Kudale* (supra), *Hanuman Rajaram Mhatre* (supra), *Kiran Dhanraj Kharat* (supra) and *Niyazuddin @ Sonu Sirajuddin Ansari* (supra), wherein the issue of consideration of extraneous material has been dealt with.

22. In the case of *Pawan Tukaram Kudale* (supra), the Division Bench of this Court had an occasion to consider that the grounds of detention are based on the entire activities of the detenu spread over a period of time from 2015 to December 2017 and the relevant material reflecting the participation/involvement of the detenu in these offences was placed before the detaining authority and it is this entire material which the detaining authority has taken into consideration while arriving at a subjective satisfaction,

based on which the order of detention has been passed. It is not possible for the detaining authority to segregate the material placed before him as relevant or irrelevant on the premise of fixing of a cut-off date specifically when the whole subjective satisfaction of the detaining authority is based on the criminal activities of the detenu and his habitual involvement into the offences punishable under Chapter XVI or XVII of the IPC. In the backdrop of these facts and also by referring the admission given by the detaining authority in his affidavit submitted before the Court, the Division Bench has observed that the aforesaid admission that the detaining authority has looked into the entire material as contained in the index of documents, but has specifically mentioned that the order of detention is based only on the two C.R.s of the recent past and two in-camera statements would reflect total non-application of mind on the part of the detaining authority and thus vitiates the subjective satisfaction reached by it.

23. In the case of ***Hanuman Rajaram Mhatre*** (supra), in the facts and circumstances of the said case, in para 10, the Division Bench of this Court has made the following observations:

"10. Perusal of the material on which the detaining authority has formed the subjective satisfaction that the detenu is "dangerous person", has revealed that the Authority has taken into consideration not only the offences punishable under Chapter XVI or XVI of the IPC which is the basis for categorizing a person as "dangerous person" as defined in Section 2(b-1) but it also refers to the material by which a person is clamped as "sand smuggler" who is engaged in unauthorized extraction, removal, collection, picking or transportation of sand. The Detaining Authority has not been able to segregate the activities of detenu and in any case when the facts and the material placed before the detaining authority has been bundled together, it is not always possible for a person to put it in strict water tight compartment and the subjective satisfaction would then be based on all the materials taken.

It is no doubt true that the court cannot substitute its opinion with the subjective satisfaction reached by the detaining authority but it is always open to the court to determine whether the formation of opinion is based on relevant material and whether the detaining authority has taken into consideration the relevant material and has excluded irrelevant and extraneous material. It is always open to the Court to examine whether reasons for formation of opinion have rational connection or relevant bearing for formation of such opinion and that it is not extraneous. Though the Court cannot arrogate to itself, responsibility of judging sufficiency of grounds, but if some of the grounds are found to be not relevant and if it affects the subjective satisfaction reached by the detaining authority, the Court would not approve of such subjective satisfaction. The order of detention cannot be upheld in such circumstance

because the Court cannot predicate as what subjective satisfaction the authority would have arrived at on exclusion of those grounds. The Hon'ble Apex Court dealing with the similar situation in the case of Re Sushanta Goswami and others reported in 1969 (1) SCC 273 observed as under :-

"Ground No. II is to the effect that as a result of the petitioner's nefarious activities prejudicial to the maintenance of public order he has become a nuisance to the society and there have been disturbances and confusion in the lives of peaceful citizens of Dum Dum Police Station and the inhabitants thereof are in constant dread of disturbance of public order.

We do not consider that above grounds are relevant to public order and if some of the grounds which are given are irrelevant the order of detention cannot be upheld because the court cannot predicate what the subjective satisfaction of the authority would have been on the exclusion of those reason, vide Dwarka Das Bhatia v. The State of Jammu and Kashmir, (1956 SCR 945) and the recent decision of this court in Pushkar Mukherjee v. State of West Bengal. (WP No. 179/68, dt. 7-11-68) Therefore the order of detention is hereby set aside."

24. In ***Kiran Dhanraj Kharat*** (supra), the Division Bench of this Court, in the facts of the said case, has observed that the evidence on record shows that subjective satisfaction of the detaining

authority made reference of previous offences registered against petitioner in 2014, 2015, 2016 and thus, the detaining authority has relied upon extraneous material.

25. In and *Niyazuddin @ Sonu Sirajuddin Ansari* (supra), in the facts of the said case, the Division Bench of this Court at Nagpur has held that no single offence with relation to the alleged activities shown from the record and thus, the subjective satisfaction of the detaining authority was vitiated by consideration of material which is not at all in existence. No single offence is registered against the petitioner for such activities.

26. In the instant case, the detaining authority has merely referred the past history in the form of two crimes registered in the years 2019 and 2020 which are now pending for trial and also one chapter case of the year 2015, however, considered the four crimes and two in-camera statements, as referred in the discussion in the impugned order so also referred by us in the foregoing paragraphs. Even the detaining authority has not discussed those crimes of 2019 and 2020 nor considered the said crimes and the chapter case for arriving at subjective satisfaction. However, so far as the crimes as discussed and which are the subject matter of the detention

order are concerned, the detaining authority has considered the same as trend of commission of crime in ascending order. It also appears to us that from the registration of crime no. 311/2020 and onwards, the petitioner was initially involved in crimes of theft by breaking open the commercial shops, however, thereafter he entered into the activities of stealing motorcycles and offences of robbery on the point of knife. The in-camera statements of those two witnesses also indicate the offences of robbery by giving the life threats. The detaining authority has considered the impact of the (i) crime no. 311/2020 for the offence punishable under sections 380, 461 of IPC registered on 21.05.2020, (ii) crime no. 317/2020 for the offence punishable under sections 380 and 461 of IPC registered on 27.05.2020, (iii) crime no. 348/2020 under section 379 of IPC registered on 10.08.2020, (iv) crime no. 370/2020 under sections 394, 34 of IPC registered on 27.08.2020, (v) the in-camera statement of witness "A" alleging robbery in the last week of October 2020 and (vi) the in-camera statement of witness "B" alleging robbery in the first week of November 2020. In view of the same, the ratio laid down in the aforesaid four cases cannot be made applicable to the facts and circumstances of the present case.

27. Learned counsel for the petitioner has relied upon three cases i.e. *Ganesh @ Ganya Shamrao Pendor* (supra), *Rushikesh Tanaji Bhoite* (supra) and *Sayed Jafar Sayed Nasir* (supra) to substantiate his contention regarding non-consideration of bail order and further, no attempt has been made to cancel the bail.

28. In *Ganesh @ Ganya Shamrao Pendor* (supra), the Division Bench of this Court at Nagpur has observed that “it would be necessary for the detaining authority to consider the order/orders granting bail to the detenu in the offences that are pending against him.”

29. In *Rushikesh Tanaji Bhoite* (supra), the Supreme Court has considered that in the detention order the grounds supplied to the detenu do not show that the detaining authority was aware of the order of bail granted in favour of the detenu. The Supreme Court has referred a decision of the majority view in the case of *Vijay Narain Singh v. State of Bihar and Others*, reported in (1984) 3 SCC 14 wherein the Supreme Court has observed that “When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinizing the validity of an order

of preventive detention which is based on the very same charge which is to be tried by the criminal court”.

30. In *Sayed Jafar Sayed Nasir* (supra), in the facts of the said case, the Division Bench of this Court at Nagpur has observed that non-supply of copy of the bail application and the full text of the order to the detenu and not placing them before the detaining authority is a ground which has been cumulatively considered along with the other grounds and that it has a proximate connection with the other ground of the detention order.

31. In the instant case, however, the grounds raised in the bail application so also the orders of bail passed by the Court are supplied to the detenu. The detaining authority has also referred the said bail orders to some limited extent in the impugned order, however, in the facts of the present case, the petitioner-detenu has committed the offences with quick succession while on bail in connection with the earlier crime which is referred in the detention order. It also appears that the petitioner-detenu has committed the offences in ascending order, firstly, committed theft by breaking open the commercial shops to steal mobile handsets, secondly,

entered into commission of crime of stealing motorcycles and thirdly, committed robbery on the point of knife. It is necessary to take a note that in a case of commission of theft, usually bail is granted after the investigation is over and recovery of the stolen articles is made. The detaining authority has considered the bail orders and further, the in-camera statements of the witnesses and observed that the petitioner is a weapon wielding desperado, dreaded criminal striking terror in the minds of peace loving and law abiding citizens residing in the localities of Mukundwadi Police Station and the adjoining areas. Thus, the action taken against the petitioner under the normal law of land is found to be insufficient and ineffective to deter him from indulging in criminal activities prejudicial to the maintenance of public order.

32. In view of the above, we do not find that the ratio laid down in the aforesaid three cases is applicable to the facts and circumstances of the present case.

33. In the case of *Bhupendra v. State of Maharashtra & Anr.* (supra) and *Ram Manohar Lohia v. The State of Bihar and Another* (supra), relied upon by learned counsel for the petitioner, the

Supreme Court had an occasion to consider the distinction between “law and order” and “public order”. In the case of ***Bhupendra*** (supra), in para 10 to 13, the Supreme Court has made the following observations:

“10. ‘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. [See *Kishori Mohan Bera v. The State of West Bengal* (1972 (3) SCC 845); *Pushkar Mukherjee v. State of West Bengal* (1969 (2)*

SCR 635); Arun Ghosh v. State of West Bengal (1970 (3) SCR 288); Nagendra Nath Mondal v. State of West Bengal (1972 (1) SCC 498).

11. The distinction between 'law and order' and 'public order' has been pointed out succinctly in Arun Ghosh's case (supra). According to that decision the true distinction between the areas of 'law and order' and 'public order' is "one of degree and extent of the reach of the act in question upon society". The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different". (See Babul Mitra alias Anil Mitra v. State of West Bengal and Ors. (1973 (1) SCC 393, Milan Banik v. State of West Bengal (1974 (4) SCC 504).

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that

is, in its impact on society, it may be very different.

13. The two concepts have well defined contours, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". [See Kuso Sah v. The State of Bihar and Ors. (1974 (1) SCC 185, Harpreet Kaur v. State of Maharashtra (1992 (2) SCC 177, T.K. Gopal v. State of Karnataka (2000 SCC 168, State of Maharashtra v. Mohd. Yakub (1980 (2) SCR 1158)] and Commissioner of Police v. C. Anita (2004(7) SCC 467). "

34. In para 13 of the said judgment, the Supreme Court has observed that it has been well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder

but every infraction of law does not necessarily result in public disorder.

35. In the instant case, the petitioner, with the help of his associates, has indulged into the activities of breaking open the shops selling commercial products such as mobile handsets etc. in the night time and considering the dates of registration of those crimes, the same had been done with quick succession. Those are not stray crimes nor can be termed as unorganized crimes of theft. Further, the petitioner's activities were found to be ascending in nature posing threat to the public order.

36. In the case of ***Hemlata Kantilal Shah*** (supra), relied upon by learned APP, in para 15, the Supreme Court has made the following observations:

“15. It is needless to say that the High Court under Article 226 of the Constitution and the Supreme Court either under Article 32 or under Article 136 of the Constitution do not sit on appeal on the orders of preventive detention. The normal law is that when an isolated offence or isolated offences is or are committed, the offender is to be prosecuted. But, if there be a law of preventive detention

empowering the authority to detain a particular offender in order to disable him to repeat his offences, it can do so, but it will be obligatory on the part of the detaining authority to formally comply with the provisions of Sub-Article (5) of Article 22 of the Constitution of India. The High Court under Article 226 and the Supreme Court under Article 32 has to see whether the formalities enjoined by Article 22(5) have been complied with by the detaining authority. If the formalities have been complied with, the Court cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detained the detenu under the Preventive Detention Act, for, that is the function of an appellate Court .”

37. In the instant case, we find that the detaining authority has complied with the provisions of Sub-article (5) of Article 22 of the Constitution of India. It is thus not required for the Court while exercising power under Article 226 of the Constitution, to consider as to whether the detaining authority should not have been satisfied on the materials before it.

38. In the case of ***The Collector and District Magistrate, W.G. Dist. Eluru, Andhra Pradesh and Ors. v. Sangala Kondamma*** (supra), relied upon by learned APP, the Supreme Court had an occasion to consider the facts placed before the detaining authority

which were proximate to each other and the material produced before the authority proposing detention had formed a chain of incidents the last of which being proximate to the date of proposed detention while other acts were proximate to each other. The Supreme Court in para 10, by considering the identical provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, has made the following observations:

“ 10. We notice from the preamble and statements and objects of the Act that it aims to prevent a person from indulging in certain illegal activities enumerated therein by his preventive detention. For the said purpose, the detaining authority must be satisfied that the proposed detainee is likely to indulge in such illegal activities in future also. This is a satisfaction that could be reasonably arrived at by the detaining authority only by examining the material that is produced by the authority proposing his detention. In such a process, a detaining authority may not always take into consideration a stray or solitary incident which may not give rise to a reasonable apprehension or satisfaction as to such future act of the proposed detainee. Therefore, it is necessary for the authority proposing the detention of a person under the Act to produce such material which shows the continuous previous illegal

activities of the proposed detainee which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while other acts must be proximate to each other. Thus, if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned in proximate to the order of detention then the early incidents can not be treated as stale and detention order cannot be set aside. In the instant case, it is seen that between the period from 10.1.2001 and 25.10.2002 the detainee was involved in five incidents of bootlegging which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention, we think the High Court was not justified in treating the two incidents of 17.1.2000 and 10.1.2001 as stale by taking them in isolation. In our opinion, the court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detainee continuing to indulge in the illegal activities which requires his preventive detention. In the present case, as noticed above, the five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detainee. In such a fact situation, we think the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention and the order of detention was based on stale grounds. While it can be stated that the incidents of 17.1.2000 and 10.1.2001 could not by themselves have been sufficient grounds to detain

the detenue but would certainly become a relevant material along with other three grounds dated 3.2.2002, 6.10.2002 and 25.10.2002 to come to the conclusion that there is a need for detaining the detenue to prevent him from indulging in similar activities in the future.”

Thus, the ratio laid down in the aforesaid case is squarely applicable to the facts and circumstances of the present case.

39. Further, in terms of the law laid down by the Supreme Court in ***T. Devaki v. Government of Tamil Nadu and Others*** (supra) and various other cases on which learned APP has placed his reliance, wherein by referring ***T. Devaki's*** case, it is held that since the Act does not require the detaining authority to specify the period for which the detenu is required to be detained, order of detention is not rendered invalidated or illegal in absence of such specification.

40. In view of the above discussion and in terms of the ratio laid down by the Supreme Court in various cases, so also by this Court and other High Courts, we are of the considered view that the detaining authority has arrived at subjective satisfaction, applied its mind to the crimes allegedly committed by the petitioner and correctly passed the impugned order of detention. We find no

substance in this Writ Petition. Hence, we proceed to pass the following order:

ORDER

The Criminal Writ Petition is hereby dismissed.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)