

SURAJ PAL SAHU
v.
STATE OF MAHARASHTRA & ORS.

SEPTEMBER 25, 1986

[R.S. PATHAK, SABYASACHI MUKHARJI AND
RANGANATH MISRA JJ.]

*National Security Act, 1980—S. 3(2)—Detention Order—Detenu
already in Jail—Validity of detention order—Principles for determina-
tion of—Legal mala fides explained.*

The detenu was arrested on December 17, 1985 pursuant to a detention order dated December 16, 1985 passed under s. 3(2) of the National Security Act, 1980 and the grounds of detention were served on him the same day. It was alleged in the order that since the year 1979 the detenu had been continuously engaging himself in committing acts prejudicial to the maintenance of supplies and services essential to the community, i.e., removing of permanent way material stocked along rail lines for maintenance of rail tracks, removing parts of carriages, wagons and signal telecommunication materials utilised for repair of railway wagons and maintenance of signals; that he used to arrange to remove railway property with the help of his 'gang' and stock the same in his godown, himself remaining behind the scene; that in a number of cases railway properties were loaded and carried away in a truck owned by the detenu and, thus, the work of maintenance of the tracks was hampered and quick movement of the wagons loaded with essential commodities such as foodgrains, arms, ammunition required by the general public and the armed forces could not be made.

The grounds indicated six different cases in which the detenu was involved, out of which in two cases he was acquitted and four cases were pending against him on the date of the passing of detention order. Each of the grounds indicated in the detention order individually and collectively was not only germane but also sufficient to satisfy the detaining authority with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supplies and services essential to the community and as such it was necessary to detain him.

A The grounds were communicated to the detenu under s. 8 of the
Act read with Art. 22(5) of the Constitution. Copies of the documents
mentioned in the detention order and placed before the detaining au-
thority were enclosed with the detention order sent to the detenu. The
B detenu was informed that he had a right to make a representation to the
State Government against the order of detention, that he should ad-
dress it in the manner indicated therein, that the State Government
would within three weeks from the date of detention make a reference to
the Advisory Board constituted under s. 9 of the Act to make a report of
detention and that he had right to make the representation to the Adv-
isory Board and if he wanted he would be heard in person by the Advisory
C Board if necessary.

A reference under s. 10 of the Act was made to the Advisory
Board and the Advisory Board considered the representation dated
January 8, 1986 of the detenu at the time of interviewing him on
January 29, 1986. The Board submitted its report under s. 12(1) of
D the Act on February 3, 1986, which was received by the Government within
the stipulated period of 7 weeks from the date of the detention, and the
Government after considering the representation of the detenu and the
report of the Advisory Board confirmed the defention order.

E The detenu challenged the detention order under Article 226 of
the Constitution alleging: (i) that the order was mala fide; (ii) that there
was total absence of material; and (iii) that in any event the provisions
of National Security Act, 1980 were not attracted but the provisions of
the Prevention of Black-marketing and Maintenance of Supplies of Es-
sential Commodities Act, 1980 would be attracted.

F A Division Bench dismissed the petition holding that permanent
way material is essential to the maintenance of railway track and safety
of the railway travelling public; that there were good grounds for deten-
tion and it was not possible to hold that there were no grounds of
detention relevant for the Act; that only National Security Act was
attracted in the facts and circumstances of the instant case.

G In the Special Leave Petition and the Petition under Article 32, on
behalf of the detenu it was contended; (i) that the grounds of detention
were vague, irrelevant and non-existent; (ii) that the grounds of deten-
tion related to as far back as 1979 and, therefore, it was not open to the
detaining authority to order detention on those grounds because in
H respect of the alleged grounds criminal cases were pending against him

and he had been enlarged on bail; (iii) that when a judicial authority was satisfied on the materials placed before it that there were no grounds for keeping the detenu in detention, on the same materials the executive authority could not substitute the judicial judgment and order detention to prevent to detenu from acting in a manner prejudicial to the interest of the community; (iv) that in view of the fact that the detenu was on bail, the power of preventive detention had been used to defeat the provisions of the Code of Criminal Procedure (v) that the alleged grounds were merely allegations of ordinary criminal cases which either had ended in acquittal or in respect of which appeals were pending or were pending determination and as such the formation of the belief by the detaining authority for the detention order was merely on surmises and on materials which the detaining authority was not competent to take note of; (vi) that the pending criminal cases did not disclose any activity of the detenu prejudicial to the maintenance of supplied and services essential to the community. The connection of the detenu with the alleged offences was not there and as such the satisfaction could not be there of the detaining authority. The detenu was in no manner connected with the alleged theft committed by certain named persons and though the ownership of the truck attributed to the detenu was not denied or disputed but the involvement of the detenu did not follow from that fact.

Dismissing the Writ Petition and the Special Leave Petition,

HLED: (1) There was no infraction of any procedural safeguard engrafted in National Security Act, 1980 and that there was rational subjective satisfaction arrived at *bona fide* on the basis of the materials available to the detaining authority and the materials had rational nexus with the purpose and object of the detention as contemplated by the Act. The detention order was therefore valid. [865A-B]

(2) In view of the Explanation to s. 3 of the Prevention of Black-marketing and Maintenance of Supplies Act, 1980, (Act 7 of 1980) the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the communities" has certain particular connotation. But in the instant case, the conduct of the detenu was prejudicial to the maintenance of supplies and services essential to the community in general and contemplated by s. 3(2) of the National Security Act and not in any particular mode contemplated by the Explanation to s. 3(1) of Act 7 of 1980 and as such is not excluded by the Explanation to sub-s. (2) of s. 3 of the Act. Therefore the High Court was right in the view it took on this aspect of the matter. [853B-D]

A (3) Even the existence of one ground is sufficient to sustain the detention order. [853F]

B (4) An order is *mala fide* when there is malice in law although there is no malice in fact. The malice in law is to be inferred when order is made contrary to the objects and purposes of the Act. Whether in any particular case this is so or not must depend upon the facts and circumstances of the case. The fact that the person sought to be detained is in fact under detention is a relevant and material factor but the allegations or the incidents leading to his detention have also to be borne in mind co-related to the object of a particular Act under which preventive detention is contemplated. [854E-F]

C (5) The National Security Act, 1980 provides for preventive detention in certain cases. Power has been given under s. 3 authorising preventive detention and sub-s. (2) thereof provides that the Central Government or the State Government might, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it was necessary so to do, make an order directing that such person be detained then the same can be done. The Explanation to this sub-section makes it clear that the expression "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-s. (1) of s. 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act 1980. [854F-H; 855A-B]

F (6) Merely on the ground that an accused in detention as an under-trial prisoner is likely to get bail, an order of detention under the National Security Act should not ordinarily be passed. If the apprehension of the detaining authority is true, the bail application has to be opposed and in case bail is granted, challenge against that order in the higher forum has to be raised. But this principle will have to be judged and applied in the facts and circumstances of each case. Where a person accused of certain offences whereunder he is undergoing trial or has been acquitted, the appeal is pending and in respect of which he may be granted bail may not in all circumstances entitle an authority to direct preventive detention and the said principle must apply but where the offences in respect of which the detenu is accused are so inter-linked and continuous in character and are of such nature that these affect

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continuous maintenance of essential supplies and thereby jeopardise the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention. [855D-G]

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Ramesh Yadav v. District Magistrate, Etah and Others [1985] 4 SCC 232 followed.

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(7) For maintaining supplies throughout the country, the railways is *per se* essential and, therefore, interference with railway lines would be endangering the maintenance of supplies. [856D]

Mohd. Subrati Alias Mohd. Karim v. State of West Bengal [1973] 2 SCR 990 at 992 followed.

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(8) The past conduct or antecedent history on which the authority purport to act should ordinarily be proximate in point of time and have a rational connection with the conclusion that the detention of the person was necessary. [861F]

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Rameshwar Shaw v. District Magistrate, Burdwan & Anr. [1964] 4 SCR 921 followed.

(9) Whether an order of detention could be passed against a person who was in detention or in jail would always have to be considered in the facts and circumstances of each case. [864E]

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Makhan Singh Tarsikha v. State of Punjab [1964] 4 SCR 932 followed.

(10) Merely because the detaining authority had chosen to base the order of detention on the discharge of the detenu by Court for want of evidence it could not be held that the order was bad in law. This branch of jurisprudence, as interpreted by this Court, has made it futile for a detenu to urge that because the ground of detention had been subject matter of criminal cases which had ended in discharge, therefore, the order of detention was mala fide. The basic imperative of proof beyond reasonable doubt did not apply to the component of subjective satisfaction for imprisonment for reasons of internal security. There might be extreme cases where the Court had held a criminal case to be false and the detaining authority for want of evidence claimed to be satisfied about prospective prejudicial activities based on what a Court had found to be baseless. There must be a live link between the

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A grounds of criminal activities alleged by the detaining authority and the purposes of detention. This credible chain is snapped if there was too long and unexplained interval between the offending acts and order of detention. If the detaining authority took the chance of conviction and, when the Court verdict went against it, fell back on its detention power to punish one whom the Court would not convict, it was an abuse and virtual nullification of the judicial process. But if honestly, finding a dangerous person getting away with it by over-awing witnesses or concealing the Commission cleverly, an authority thought on the material before it that there was need to interdict public disorder at his instance he might validly direct detention. [862A-D]

C (11) It was always the past conduct, activities or the antecedent history of a person which the detaining authority took into account, in making a detention order. No doubt the past conduct, activities or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person was necessary but it was for the detaining authority who had to arrive at a subjective satisfaction in considering the past activities and coming to his conclusion if on the basis of those activities he was to be satisfied that the activities of the person concerned were such that he was likely to indulge in prejudicial activities necessitating his detention. Where an earlier order of detention was either revoked or had expired, any subsequent detention order could be passed only on fresh facts arising after the expiry or revocation of the earlier order. [861F-H]

Masood Alam Etc. v. Union of the India and Others [1973] 1 SCC 551 followed.

F (12) Mere service of detention order in jail *per se* is not bad.

G (13) The law of preventive detention is a hard law and therefore should be strictly construed. Care should be taken that the liberty of the person was not jeopardised, unless the case fell squarely within the four corners of the relevant law. The law of preventive detention is not to be used merely to clip the wings of the accused who was involved in a criminal prosecution. Where a person was enlarged on bail by a competent criminal Court, great caution should be exercised in scrutinising the validity of an order of preventive detention which was treated on the very same charge which was to be tried by the criminal Court. [863A-B]

H *Vijay Narain Singh v. State of Bihar & Ors.* [1984] 3 SCR 435 followed.

(14) Having regard to the purpose of the Act, the detaining authority must take into consideration rational, proximate, reasonable past and present and that should be the basis for the horoscope for the future so as to determine whether the person proposed to be detained comes within the mischief of the Act. If the person is in detention or is under trial and his conviction is likely but his conduct comes within the mischief of the Act then the authority is entitled to take a rational view of the matter. The grounds must be there. The decision must be *bona fide*. [863D-F]

(15) The fact that a man is not in jail *per se* would not be determinative of the factor that order of preventive detention could not be passed against him. The fact that a man was found not guilty in a criminal trial would not also be determinative of the factors alleged therein. All these factors must be objectively considered and if there are casual connections and if *bona fide* belief was formed then there was nothing to prevent from serving an order of preventive detention even against the person who was in jail custody if there is imminent possibility of his being released and set at liberty if the detaining authority was duly satisfied. [864E-G]

Ramesh Yadav v. District Magistrate, Etah and Others [1985] 4 SCC 232, *Rameshwar Shah v. District Magistrate Burdwan & Anr.* [1964] 4 SCR, 921 and *Makhan Singh Tarsikka v. State of Punjab* [1964] 4 SCR 932 distinguished.

Maledath Bharathan Malyali v. The Commissioner of Police AIR 1950 Bombay 202, Merugu Satyanarayan Etc. Etc. v. State of Andhra Pradesh and Others [1983] 1 SCR 635, *Golam Hussain Alias Gama v. The Commissioner of Police Calcutta and Others* [1974] 3 SCR 613, *Sahib Singh Dugal v. Union of India*, [1966] 1 SCR 313, *Mohd. Salim Khan v. Shri C. C. Bose & Another* [1972] 2 SCC 607, *Borjahan Gorey v. State of West Bengal* [1972] 2 SCC 550, *Godavari Shamrao Parulekar v. State of Maharashtra & Others* [1964] 6 SCR 446, *Gopi Ram v. State of Rajasthan AIR 1967 SC 241, Masood Alam Etc. v. Union of India and Others* [1973] 1 SCC 551, *Dulal Roy v. The District Magistrate, Burdwan & Others* [1975] 1 SCC 837, *Dr. Ramakrishna Rawat v. District Magistrate, Jabalpur and Another*, [1975] 4 SCC 164 at 167 and 169, *The Barium Chemicals Ltd. & Anr. v. The Company Law Board and Others* [1966] Supp. SCR 311 at 354 and 363, *Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala and Others* [1985] Supp. SCC 144 and *Shiv Ratan Makim s/o. Nandlal Makim v. Union of India and Others* [1986] 1 SCC 404 considered.

A ORIGINAL/CRIMINAL APPELLATE JURISDICTION:
Writ Petition (Criminal) No. 296 of 1986.

Under Article 32 of the Constitution of India.

B *with*

Special Leave Petition (Criminal) No. 1265 of 1986

From the the Judgment and Order dated 27.2.1986 of the Bombay High Court in Crl. Writ Petition No. 1 of 1986.

C R.K. Garg and Sunil K. Jain for the Petitioner.

S.B. Bhasme, A.S. Bhasme and A.K. Khanwilkar for the Respondents.

D The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Writ Petition No. 296 of 1986 and Sepcial Leave Petition (Criminal) No. 1265 of 1986 are connected and relate to an order of detention of one Rampal Sahu dated 16th December, 1985 under section 3(2) of the National Security Act, 1980 (hereinafter called the said 'Act'). These are dealt with by this judgment.

F The said Rampal Sahu (hereinafter called 'the detenu' was detained by the aforesaid order which was served on him on 17th December, 1985 with the grounds of detention. According to the writ petition as well as the special leave petition the grounds of detention served on the detenu did not disclose any violation of the Essential Commodities Act or Essential Services Maintenance Act. In the premises it is the contention of the petitioner that the detention was illegal and unconstitutional. The State of Maharashtra approved the detention on 24th December, 1985.

G The detention order as mentioned hereinbefore was under section 3(2) of the said Act. The detenu was arrested on 17th December, 1985 and the grounds of detention were served on the same day. The order alleged, *inter alia*, that since the year 1979, the detenu had been continuously engaging himself in committing acts prejudicial to the maintenance of supplies and services essential to the community i.e., removing of permanent way material stocked along rail lines for

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maintenance of rail tracks removing parts of carriages, Wagons and Signal Telecommunication materials utilised for repair of Railway Wagons and maintenance of signals. It was further alleged that the said detenu used to arrange to remove railway property with the help of his 'gang' and stock the same in his godown, himself remaining behind the scene. It was alleged that in a number of cases railway properties were loaded and carried away in truck No. MHG 6302 which was owned by the detenu. It was stated that he was indulging in removing railway material which was stocked along the rail tracks for the maintenance of the tracks, thus the work of maintenance of the tracks was hampered and quick movement of the wagons loaded with essential commodities such as food-grains, arms, ammunition required by the general public and the armed forces could not be made. Such acts were prejudicial, according to the order of detention, to the maintenance of supplies and services essential to the community.

The grounds further indicated six different cases. The case numbers were:

1. P.S. Deori Crime No. 69/83 u/s 379, 34 I.P.C. decided by the J.M.F.C. Sakoli vide C.C. No. 50/84.
2. R.P. E. Post Ajni Crime No. 20/84 u/s 3 R.P. (UP) Act, 1966 An appeal u/s 378 of the code of Criminal Procedure is being filed in the High Court against the order of acquittal dated 24/5/85 passed by the J.M.F.C., Railway Court, Nagpur, vide C.C. No. 362/84.
3. R.P.F. Post Ajni Crime No. 43/84 u/s 3 RP (UP) Act 1966 pending trial before the J.M.F.C. (Rly.). Nagpur, vide C.C. No. 153/85.
4. P.S. Kamptee Crime No. 195/84 u/s 379, 411, 34 I.P.C. pending trial before the J.M.F.C., VIII Court, Nagpur, vide C.C. No. 200/84.
5. P.S. Kamptee Crime No. 53/85 u/s 379, 34 IPC under investigation.
6. R.P.F. Post Ajni Crime No. 41/85 u/s 3 RP(UP) Act pending trial before the J.M.F.C. (Rly.) Court, Nagpur, vide C.C. No. 212/85.

A The incident in the first case was alleged to have taken place on 26th December, 1983. It was alleged that a truck bearing Registration No. MHG 6302 was standing near the iron bridge on the National Highway and some thieves were trying to cut the steel girders meant for constructing road bridge for removing the same. Other particulars were named therein and the names of two persons were also mentioned. There was some stealing. The stolen property including steel girders and the truck mentioned above were seized. It appears that the truck was owned by the detenu. The detenu was arrested on 26th February, 1984 and the aforesaid two persons were convicted under section 379 read with section 34 I.P.C. The detenu, however, was acquitted.

C In the second case report had been received that some railway material including 32 Lbs. CST 9 plates and tie bars were stolen from the railway track in between Borkhedi and Sindi Railway Stations by a gang of culprits who threatened the witness, i.e., the chowkidar on duty and took away the railway property in a Matador. During enquiry into the above complaint, it transpired that the stolen property was unlawfully kept by the detenu in his godown at Nagpur and a search warrant was obtained and the stolen railway property valued at Rs.25,000 was recovered from the godown of the detenu on 19th June, 1984. The detenu was acquitted by the Magistrate but an appeal had been preferred in the High Court of Nagpur and the same was pending when the detention order was passed. It was further stated that the permanent way material was essential for the maintenance of the railway tracks and the safety of the travelling public. It was normally kept at secure places near the track for ready availability for replacing the broken or unserviceable material in the track. The trains were required to be detained as a result of theft causing loss to the Government and there was delay in making supplies to the public. It was further alleged that as many as 28 wagons were marked sick for repairs and were sent to Ajni workshop for repairs, for want of the required spare parts which were seized from the unlawful possession of the detenu. According to the order of detention, as a result the Government and public indents of Wagons totalling 792 could not be cleared for loading different commodities to be supplied in various parts of the country.

H In case No. 3, a report had been received that at a particular point between Buti Bori & Umrer section at some Km. near the railway crossing gate, 400 fish plates were stolen. The enquiry had revealed that the stolen property was unlawfully obtained and kept by

the detenu at certain place at Nagpur. A search warrant was obtained and 400 fish plates and carriage and Wagon parts were recovered from the godown of the detenu. In the premises the detenu was arrested on 14th December, 1984 and the aforesaid case i.e., third case was pending on the date of the order of detention. It is the case of the Government that due to the unlawful possession of the railway property by the detenu, as many as ten wagons had to be marked sick and could not be made available to the public and the Government for loading different essential commodities to be supplied in different parts of the country in the month of December, 1984. As a result of this, as many as 3224 indents put up by the Government and the public for the supply of wagons could not be cleared due to shortage of empty wagons.

The fourth case related to an offence under section 379 I.P.C. which was registered against the detenu under sections 379, 411 and 34 I.P.C. and was pending trial in Nagpur. The complaint was to the effect that 128 CST-9 plates were stolen from five points between Kamptee & Kalmana Railway Line and these were valued at Rs.4608. The property was loaded in truck bearing No. MHG 6302 owned by the detenu. The truck driver was arrested and the property was recovered from the godown of the detenu at the instance of the driver. The detenu was arrested in connection with this case on 3rd December, 1984, and the case was pending on the date of the issue of the detention order.

Regarding the fifth case it may be mentioned that an offence was alleged to have been committed by the detenu under section 379 read with section 34 I.P.C. on the complaint of certain person who was working as a Manager of the Jamshedpur Transport Corporation, Nagpur. It was reported that three bundles of Aluminium wire weighing about 500 kgs. valued at Rs. 1,60,000 were stolen by some unknown criminals on 21st March, 1985. During investigation it was disclosed that the culprits belonged to the 'gang' of the detenu and that they had threatened the chowkidars on duty and forcibly removed the aluminium wire bundles. It was stated in the detention order that the detenu was the main brain behind this big daring robbery and he used his truck bearing No. MHG 6302 for transporting the stolen property. The detenu anticipating arrest moved the court and obtained anticipatory bail with a view to avoid arrest by the police. The case was pending investigation. It was further stated that the aluminium wire which was stolen was meant for the use of various public and Govt. departments and due to aforesaid criminal activity as indicated above the supply of

A the wire could not be maintained as it was broken into pieces and made unserviceable.

B In respect of the sixth case it was further alleged that on receiving information that 90 Lbs, rails 31 meters long were received and kept unlawfully by the detenu in his godown at Nagpur, the inspector of the C.I.B. and Railway Protection Force raided the godown on 22nd May, 1985 and seized 90 Lbs. rails about 30 meters long, break and some new steel sleepers and other materials. The stolen property was worth Rs.20,000. The detenu was arrested in this case on 22nd May, 1985. The case was pending trial on the date of the issue of the detention order in Nagpur. It is the case of the detaining authority that due to this unlawful possession of break-locks by the detenu, four wagons were marked sick and had to be sent to the Railway Carriage and Wagon Workshop at Ajni for repair, as a result was indents put up to the Railway Administration by the Public and the Government to provide the empty wagons for supply of the different commodities in the different parts of country could not be complied with.

D In the backdrop of the aforesaid grounds it was further stated that the activities of the detenu were prejudicial to the maintenance of supplies and services essential to the community. It was further alleged that each of the grounds indicated above individually and collectively was not only germane but also sufficient to satisfy the detaining authority with a view of preventing the detenu from acting in any manner prejudicial to the maintenance of supplies and services essential to the community and as such it was necessary to detain him. It was further stated that these grounds were communicated to the detenu under section 8 of the aforesaid Act read with article 22(5) of the Constitution of India upon which the detention order had been made. Copies of the documents mentioned in the said order which were placed before the detaining authority were enclosed with the detention order sent to the detenu. He was further informed that he had a right to make a representation to the State Government against the order of detention and would be afforded the earliest opportunity to make such a representation. He was further informed that he should address it in the manner indicated therein. He was informed that the State Government would within three weeks from the date of detention of the detenu make a reference to and place the requisite material before the Advisory Board constituted under section 9 of the said Act and asking them to make a report of detention within seven weeks. He was informed that he had a right to make the representation to the Advisory Board and if

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he wanted, he would be heard in person by the Advisory Board in the course, if it found it necessary.

In this petition under article 32 of the Constitution, it is the case of the petitioner on behalf of the detenu that the grounds of detention were vague, irrelevant and non-existent. It was further urged on behalf of the petitioners that the grounds of detention on which the detenu was detained relating to as far back as 1979. It was not open to the detaining authority to order detention of the detenu on the said grounds. It was highlighted that in respect of alleged grounds, criminal cases were pending against the detenu and he had been enlarged on bail. It was submitted that when a judicial authority was satisfied on the materials placed before it that there were no grounds for keeping the detenu in detention, on the same materials the executive authority namely, the detaining authority could not substitute the judicial judgment and order detention to prevent the detenu from acting in a manner prejudicial to the interest of the community.

It was submitted by Mr. Garg on behalf of the detenu that in this case in view of the fact that the detenu was on bail, the power of preventive detention was being used to defeat the provisions of the Code of Criminal Procedure and ordinary normal procedure. It was further the submission of Mr. Garg that the alleged grounds were merely allegations of ordinary criminal cases which either had ended in acquittal or in respect of which appeals were pending or were pending determination and as such the formation of the belief by the detaining authority for the detention order was merely on surmises and on materials which the detaining authority was not competent to take note of. With reference to the various pending cases, it was submitted on behalf of the detenu that these criminal cases did not disclose any activity of the detenu prejudicial to the maintenance of supplies and services essential to the community. The connection of the detenu with the alleged offences was not there and as such the satisfaction could not be there of the detaining authority. The detenu according to the petitioner, was in no manner connected with the alleged theft committed by certain named persons and though the onwership of the truck attributed to the detenu was not denied or disputed but the involvement of the detenu did not follow from that fact, it was submitted on behalf of the detenu.

It is further the case on behalf of the detenu and the submission of Mr. Garg that it was not open to the detaining authority to use the allegations of the criminal cases to justify 'preventive detention'. It

A was further his submission that these did not establish proximate relation either with the maintenance of supplies or services essential to the life of the community nor did these involve any violation of relevant laws made by the Parliament dealing with the maintenance of supplies of essential commodities or maintenance of essential services. It is the case on behalf of the detenu that preventive detention is no substitute for detention under the ordinary criminal law. According to the petitioner, there was no allegation against the detenu of any violation of Essential Commodities Act or any provision of the Maintenance of Essential Services Act. The grounds mentioned were cases of ordinary theft and should have been proceeded against under the ordinary law of crimes. The detenu was released on bail. The connection of the detenu with the removal of fish plates for the supply of wagons was too remote to be any basis of satisfaction. In fourth case the detenu was on bail and detenu could not be kept under preventive detention in derogation of his liberty granted by bail by the appropriate judicial authority. Regarding the fifth case, the detenu had already been granted anticipatory bail. The order of the court could not be defeated by keeping the detenu in preventive detention, it was submitted by Mr. Garg. It was urged that requisite satisfaction required under section 3(2) of the said Act was not in fact formed and could not have been formed on the grounds alleged nor was there any rational connection for the formation of such satisfaction. The alleged incidents were denied and it was further submitted that if at all mere infractions of ordinary law could not fall in the category of public order or violation of any law indicated to the maintenance of supply or essential services. It was open to justify the order of detention even if one or more of the six grounds were found to be relevant. The documents, further, did not disclose factual connection with the alleged offences. No statement of the witnesses had been supplied except one related in ground No. 5, it was urged in the petition.

It was further submitted that the provisions of Act 7 of 1980 being Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 could perhaps have application and in view of Explanation to Section 3(2) of the Act, the impugned order was bad. Our attention was drawn to the provisions of the said Act of 1980. Section 3(1) and (2) of the said Act reads as follows:

“Power to make orders detaining certain persons—

(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially

empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation—For the purposes of this sub-section, the expression “acting in any manner, prejudicial to the maintenance of supplies of commodities essential to the community” means:-

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:

(a) District Magistrates:

(b) Commissions of Police, wherever they have been appointed,

may also, if satisfied as provided in sub-section

A (1), exercise the powers conferred by the said sub-section.

B In answer to the petition in the affidavit of the opposition filed on behalf of the respondent, it was stated that the detenu Rampal Sahu was detained and a reference had been duly made under section 10 of the said Act to the Advisory Board. The detenu was interviewed by the Advisory Board on 29th January, 1986 and the Board had submitted its report under section 12(1) of the said Act on 3rd February, 1986 which had been received by the Department on the same day. As such the report of the Advisory Board was received by the Government within the stipulated period of seven weeks from the date of detention as required by the law.

C The detenu had submitted his representation dated 8th January, 1986 to the Advisory Board which was considered by the Board at the time of his interview before the Board on 29th January, 1986. The said representation was received by the Home Department along with the report of the Advisory Board and was considered together with the report of the Advisory Board by Government and the detention order was confirmed by the Government Order. All procedural safeguards of law were duly followed. There was no breach of the same. It is not necessary to reiterate the affidavit in reply.

E As has been mentioned hereinbefore, on the same facts, the petition under article 226 had been filed in the High Court at Nagpur. The said application was dismissed by a Division Bench of the High Court on 27th February, 1986. The petitioner has come up from the said decision which is the next matter being Special Leave Petition No. 1265 of 1986 and same will be disposed of by this judgment.

F The High Court in its judgment referred to the grounds. It reiterated that permanent way material is essential to the maintenance of railway track and safety of the railway travelling public. After referring to the various grounds referred to hereinbefore, the High Court has noted that three points were urged before it on behalf of the detenu namely; (1) the order was mala fide, (2) there was total absence of material, and (3) in any event the provisions of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 being Act of 1980 would be attracted. The High Court referred to the affidavits of the Commissioner of Police who passed the detention order which was filed in the High Court and found that there were good grounds for detention and it was not possible to hold that there were no grounds of detention relevant for the Act.

The High Court referred to the expression 'acting in any manner, prejudicial to the maintenance of supplies of commodities essential to the community' as mentioned in Explanation to section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The High Court was of the view that it was clear that only National Security Act was attracted in the facts and circumstances of this case.

In view of the Explanation to section 3 of Act 7 of 1980, it appears "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" has certain particular connotation. But in the instant case the Act under consideration, the conduct of the detenu was prejudicial to the maintenance of supplies and services essential to the community in general as contemplated by section 3(2) and not in any particular mode contemplated by Explanation to section 3(1) of Act 7 of 1980 and as such is not excluded by the Explanation to sub-section (2) of section 3 of the Act. In the premises we are therefore of the opinion that the High Court was right in the view it took on this aspect of the matter. We are also of the opinion that for the same reason, the same contentions urged before us in support of the writ petition cannot be sustained.

As mentioned hereinbefore, before the High Court also the insertion of section 5A of the Act by the National Security (Second Amendment) Act, 1984 was challenged under which even the existence of one ground is sufficient. Before us no ground was canvassed about the validity of the said Amendment and inclusion of section 5A of the Act.

It must therefore be held that even the existence of one ground was sufficient to sustain the detention order.

Mr. Garg drew our attention to certain observations of Chagla, C.J., in a Full Bench decision of the High Court of Bombay in *Maledath Bharathan Malyali v. The Commissioner of Police* AIR 1950 Bombay 202. That was a case under the Bombay Public Security Measure Act being Act No. 6 of 1947. There was an order of detention under section 2(A1) of the Act for the collateral purpose. It was held that when the detaining authority had made up his mind to detain a person who was alleged to have committed an offence, then, the detaining authority had made his choice and it would not be permissible, according to that decision, for him to investigate the offence while still keeping the person under detention and not complying with the provi-

- A sions of the law with regard to investigation. If the purpose of detaining a person was a collateral purpose i.e., to deprive him of his rights and safeguards under the Criminal Procedure Code and to carry on an investigation without the supervision of the Court then the detention was mala fide and could not be justified. Chagla, C.J. at page 203
- B speaking for the Full Bench observed that an order of detention under the Security Act could only be justified in a Court of law provided it was made bona fide; and order of detention could not be made for an ulterior motive or for a collateral purpose. The detaining authority, it was further observed, must only consider the objects for which the Act was passed and the only consideration which must weigh with the detaining authority was public safety, maintenance of public order and
- C the preservation of peace and tranquility in the Province of Bombay. If in making the order his mind was influenced by any consideration extraneous to the Act, then the order would be bad and could not be upheld. The question that the Court had to consider in that case was whether in making the order the Commissioner of Police was influenced by any collateral purpose and whether any extraneous
- D factor had weighed on his mind when he made the order. When we speak of an order being made mala fide, it did not mean that the Court attributed to the detaining authority any improper motive.

- An order is mala fide when there is malice in law although there is no malice in fact. The malice in law is to be inferred when an order is
- E made contrary to the objects and purposes of the Act. Whether in any particular case this is so or not must depend upon the facts and circumstances of the case. The fact that the person sought to be detained is in fact under detention is a relevant and material factor but the allegations or the incidents leading to his detention have also to be borne in mind and co-related to the object of a particular Act under
- F which preventive detention is contemplated. In the instant case, the Act was The National Security Act, 1980. It was an Act to provide for preventive detention in certain cases and for matters connected therewith. Power has been given under section 3 authorising preventive detention of any person from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers and of the
- G security of India. Sub-section (2) of section 3 provides that the Central Government or the State Government might, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or *from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services*
- H *essential to the community it was necessary so to do, make an order*

directing that such person be detained then the same can be done, (emphasis supplied). The Explanation to this sub-section makes it clear that the expression "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980, as we have noted before.

Our attention was drawn to several authorities where this Act has been considered.

In a recent decision of this Court, one of us (Ranganath Misra, J) had to consider the effect of passing order for preventive detention where the detenu was in jail.

In *Ramesh Yadav v. District Magistrate, Etah and Others* [1985] 4 SCC 232 it was held that merely on the ground that an accused in detention as an under-trial prisoner was likely to get bail, an order of detention under the National Security Act should not ordinarily be passed. If the apprehension of the detaining authority was true, Court observed, the bail application had to be opposed and in case bail was granted, challenge against that order in the higher forum had to be raised. We respectfully agree with this conclusion. But this principle will have to be judged and applied in the facts and circumstances of each case. Where a person accused of certain offences whereunder he is undergoing trial or has been acquitted, the appeal is pending and in respect of which he may be granted bail may not in all circumstances entitle an authority to direct preventive detention and the principle enunciated by the aforesaid decision must apply but where the offences in respect of which the detenu is accused are so inter-linked and continuous in character and are of such nature that these affect continuous maintenance of essential supplies and thereby jeopardize the security of the State, then subject to other conditions being fulfilled, a man being in detention would not detract from the order being passed for preventive detention. *Merugu Satyanarayana Etc. Etc. v. State of Andhra Pradesh and Others* [1983] (1) SCR 635 was a case dealing with an order under section 3(2) of the Act. There this Court found that the affidavit in opposition supporting the reply to the show cause notice was not from the person who passed the detention order. There the affidavit was of a sub-inspector of police at whose instance the arrest was made and could not therefore satisfy the constitutional mandate

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A that will be treated as nonest. In the instant case before us a point was
made that the counter was made by a desk clerk of the Home Depart-
ment in writ petition. This would have been a fatal defect and the
B government's view could not have been considered but there was an
application under article 226 of the Constitution before the High Court
challenging the identical detention order on the same grounds. Before
the High Court Sree Malhotra and Sree S.K. Seth who were the Com-
missioners of Police had filed two separate affidavits upholding the
issue of the detention order and explaining the grounds and the
reasons for the same. If those affidavits are taken into consideration,
as these must—be then there is no substance in this ground. In the
C aforesaid case assurance was given before this Court in an earlier case
that preventive detention would not be resorted to against political
opponents. In the said decision the facts were entirely different. That
was a case affecting the liberty of a subject on political consideration.

D For maintaining supplies throughout the country the railways
was *per se* essential, and, therefore, interference with railway lines
would be endangering the maintenance of supplies—see the observa-
tions of this Court in *Mohd. Subrati Alias Mohd. Karim. v. State of
West Bengal* [1973] 2 SCR 990 at 992.

E This Court in *Remeshwar Shaw v. District Magistrate, Burdwan
& Anr.*, [1964] 4 SCR, 921 had to deal with preventive detention of a
person who was in jail custody. There the petitioner was detained by
an order of the District Magistrate under the provisions of the Preven-
tive Detention Act, 1950. The order recited that the District Magis-
trate was satisfied that it was necessary to detain the petitioner with a
view to prevent him from acting in a manner prejudicial to the mainte-
F nance of Public order. This order was served on the petitioner on the
15th February, 1963, while he was in jail custody as an under-trial
prisoner in connection with a criminal case pending against him.

G It was urged on behalf of the petitioner in that case that the
detention of the petitioner was not justified by the provisions of sec-
tion 3(1) of the Preventive Detention Act, 1950. It was noted by
Justice Gajendragadkar at page 925 of the report speaking for the
Court that the basis of the order of detention which the authority was
empowered to pass against a person under section 3(1)(a) was that if
the said order was not passed against him, he might act in a prejudicial
H manner. In other words, the authority considered the material brought
before it in respect of the person, examined the said material and
reached the conclusion that the material showed that the said person

might indulge in prejudicial activities if he was not prevented from doing so by an order of detention. The Court then posed the question how could the authority come to the conclusion that the person who was in jail custody might act in a prejudicial manner unless he was detained. The learned judge was of the view that the scheme of the section postulated that if an order of detention was not passed against a person, he would be free and able to act in a prejudicial manner. In other words, at the time when the order of detention was brought into force, the person sought to be detained might have freedom of action. That alone would justify the requirement of the section that the order of detention was passed in order to prevent a prejudicial conduct, of the person which took place in that case ten years before the date of detention and nothing was known against the person indicating i.e., the tendency to act in a prejudicial manner. Even if it was ten years old, the authority was satisfied that detention was necessary. The court also noted that the past conduct or antecedent history on which the authority purported to act should ordinarily be proximate in point of time and have a rational connection with the conclusion that the detention of the person was necessary. The court, however, further held that as an abstract proposition of law, there might not be any doubt that section 3(1)(a) of the said Act did not preclude the authority from passing an order of detention against a person while he was in detention or in jail. But the relevant facts in connection with the making of the order might be different and that might make a difference in the application of the principle that the order of detention could be passed against a person in jail. The Court, however, was reluctant to lay down any inflexible test. In that case the petitioner was ordered to be released on the ground that he was served with the order of detention while he was in jail custody. In the instant case before us, the petitioner is not in jail custody.

In *Makhan Singh Tarsikka v. State of Punjab* [1964] 4 SCR 932 the court was concerned more or less with the same facts. The court observed at p. 937 of the report that the aspect of the matter which was emphasised in the case of *Rameshwar Shaw* (supra) was the relevance of considerations of proximity of time and concluded that whether an order of detention could be passed against a person who was in detention of in jail would always have to be considered in the facts and circumstances of each case. The order of detention in that case was also set aside in view of the facts mentioned therein.

In *Golan Hussain Alias Gama v. The Commissioner of Police, Calcutta and Others* [1974] 3 SCR 613 the question arose under sec-

A tions 3(1) and 3(2) of the Maintenance of Internal Security Act, 1971.
There pursuant to an order under section 3(1)(a)(ii) read with section
3(2) of the said Act the petitioner in that case was arrested for hurling
B soda water bottles, brick-bats and bombs indiscriminately on a group
of persons on different dates. The order of detention said that if left
free and unfettered the petitioner was likely to continue to disturb
C maintenance of public order by acting in similar manner. In an earlier
criminal case the petitioner was discharged since no witness deposed
against him in open court. Thereafter the petitioner was detained under
the Act. In a petitioner under article 32 of the Constitution, it was
contended that the detention was mala fide because it was after his
D discharge by the court for want of evidence and secondly, there had
been a long interval of nine months between the criminal incidents and
the detention order, thirdly the order of detention which did not
specify a period as was violative of section 12 of the said Act and lastly
the detention was founded on prevention of public disorder while the
acts imputed to the petitioner were aimed at a particular person, not
the general public.

It was held that merely because the detaining authority had chosen
to base the order of detention on the discharge of the petitioner by
court for want of evidence it could not be held that the order was bad
in law. This branch of jurisprudence, as interpreted by this Court, has
E made it futile for a detenu to urge that because the grounds of detention
had been the subject matter of criminal cases which had ended in
discharge, therefore, the order of detention was mala fide. The basic
imperative of proof beyond reasonable doubt did not apply to the
component of subjective satisfaction for imprisonment for reasons of
internal security. There might be extreme cases where the court had
F held a criminal case to be false and the detaining authority for want of
evidence claimed to be satisfied about prospective prejudicial activities
based on what a court had found to be baseless. In the present case
the order of discharge was made purely for want of evidence on the
scope that witnesses were too afraid to depose against to desperate
character, cannot come under the exceptions carved out by the court
to this category. It was further emphasised that there must be a live
G link between the grounds of criminal activities alleged by the detaining
authority and the purpose of detention. This credible *chain* is snapped
if there was too long and unexplained interval between the offending
acts and order of detention. If the detaining authority took the chance
of conviction and, when the court verdict went against it, fell back on
its detention power to punish one whom the court would not convict, it
H was an abuse and virtual nullification of the judicial process. But if

honestly, finding a dangerous person getting away with it by overawing witnesses or concealing the commission cleverly, in authority thought on the material before it that there was need to interdict public disorder at his instance he might validly direct detention. In the present case, the acts were serious, being bomb hurling and brickbat throwing in public places creating panic. Involvement of the petitioner was discovered only during the investigation. It was further held that the argument that detention without defined duration is *ipso jure* invalid could not be sustained. No responsible government should or would be unresponsive to the claim of citizen's freedom. The nature of the act from the circumstances of its commission, the impact on the people around and such factors constitute the pathology of public disorder. These acts could not be isolated from their public setting nor was it possible to analyse its molecules as in a laboratory but to take its total effect on the flow of orderly life. It might be a question of degree and quality of activity of the sensitivity of the question involving people. To dissect further is to defeat the purpose of social defence which is the paramount purpose of the preventive detention.

If, however, a detention order is malafide then the same is bad. Reliance was placed for this proposition on the decision of this Court in *Sahib Singh Dugal v. Union of India*. [1966] 1 SCR 313.

Mohd. Salim Khan v. Shri C. C. Bose & Another [1972] 2 SCC 607 depended upon the particular facts of that case, so is the position with *Borjahan Gorey v. State of West Bengal* [1972] 2 SCC 550 to which our attention was drawn, where it was highlighted that judicial trial for punishing the accused for the commission of an offence was a jurisdiction distinct from that of detention under the Act which had in view the object of preventing the detenu from acting prejudicial to the security of the State and maintenance of public order. The fields of these two jurisdictions were not co-extensive nor were they alternatives. It must be remembered that the grounds of detention related to past acts on which an opinion as to the likelihood of the repetition of such or similar acts could be based.

It was submitted that in order to invoke the provisions of these Acts for securing preventive detention under the National Security Act, there must be something imminent. In *Godavari Shamrao Parulekar v. State of Maharashtra & Others* [1964] 6 SCR 446 where referring to several authorities Wanchoo, J. speaking for the Court observed at page 452 of the report that in those cases it was held by this Court that where a person was detained in jail as an under-trial pris-

A oner no order of detention either under the Preventive Detention Act
or under the Rules could be served on him because one of the neces-
sary ingredients which go to make up the satisfaction of the detaining
authority is necessarily absent in such a case. It was pointed out in
B *Rameshwar Shaw's* case (supra) that before an authority can legiti-
mately come to the conclusion that the detention of the person was
necessary to prevent him from acting in a prejudicial manner, the
authority had to be satisfied that if the person was not detained, he
would act in a prejudicial manner and that inevitably postulated free-
dom of action to the said person at the relevant time. The Court noted
two types of cases. Those two cases were concerned with the service of
C an order of detention under the Preventive Detention Act or under the
Rules on a person who was in jail in one of two circumstances
namely—where he was in jail as an under-trial prisoner and the period
for which he was in jail was indeterminate or where he was in jail as a
convicted person and the period of his sentence had still to run for
some length of time. In those cases the service of the order of deten-
D tion under the Preventive Detention Act or under the Rules in jail
would not be legal for one of the necessary ingredients about which the
authority had to be satisfied would be absent, namely, that it was
necessary to detain the person concerned which could only be post-
ulated of a person who was not already in prison. But in other types of
cases this Court had to deal with *G.S. Parulekar's* case. The appellants
were not under detention either as under-trial prisoners for an inde-
E terminate time or as convicted persons whose sentences were still to
run for some length of time. They were detained under the Preventive
Detention Act by an order dated 7th November, 1962 which had been
reported to Government for approval and which order could only
remain in force for 12 days under section 3(3) of the said Act unless in
the meantime it had been approved by the State Government. In those
F cases the principles of the decision referred to in *Rameshwar Shaw's*
case and other cases could not be applied.

If there was an imminent possibility of the man being set at
liberty and his detention coming to an end, then it appears, as a princi-
ple, if his detention is otherwise necessary and justified then there is
G nothing to prevent the appropriate authorities from being satisfied
about the necessity of passing an appropriate order detaining the
person concerned.

In *Gopi Ram v. State of Rajasthan*, AIR 1967 SC 241 Mudholkar,
J. reiterated the principle that law does not permit double detention
H and referring to *Rameshwar Shaw's* case it was reiterated that when a

person was in jail custody and the criminal proceedings were pending against him, the appropriate authority might in a given case take the view that criminal proceedings might end very soon and might terminate in his acquittal. In such a case, it would be open to the appropriate authority to make an order of detention, if the requisite conditions of the Rule or the section were satisfied, and serve it on the person concerned even after he was acquitted in the said criminal proceedings.

Masood Alam Etc. v. Union of India and Others [1973] 1 SCC 551 was a case where it was held that if the grounds were relevant and germane to the object of the detaining Act then merely because the objectionable activities covered thereby also attracted the provisions of Chapter VIII, Criminal Procedure Code, the preventive detention could not for that reason alone be considered to be *mala fide* provided the authority concerned was satisfied of the necessity of the detention as contemplated by the Act. The jurisdiction of preventive detention sometimes described as jurisdiction of suspicion depended on subjective satisfaction of the detaining authority. If the detaining authority was of opinion on grounds which were germane and relevant, that it was necessary to detain a person from acting prejudicially as contemplated by section 3 of the Act then it was not for this court to consider objectively how imminent was the likelihood of the detenu indulging in those activities. There was no legal bar in serving an order of detention on a person who was in jail custody if he was likely to be released soon thereafter and there was relevant material on which the detaining authority was satisfied that if free, the person concerned was likely to indulge in activities prejudicial to the security of the State or maintenance of public order. The Court stressed upon the fact that it was always the past conduct, activities or the antecedent history of a person which the detaining authority took into account in making a detention order. No doubt the past conduct, activities or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person was necessary but it was for the detaining authority who had to arrive at a subjective satisfaction in considering the past activities and coming to his conclusion if on the basis of those activities he was to be satisfied that the activities of the person concerned were such that he was likely to indulge in prejudicial activities necessitating his detention. Where an earlier order of detention was either revoked or had expired, any subsequent detention order could be passed only on fresh facts arising after the expiry or revocation of the earlier order.

A *Golan Hussain Alia Gama v. Commissioner of Police, Calcutta, and Others* (supra) highlights the need for causal connection between the grounds and the action proposed. The jurisprudence dealing with prohibitory detention or preventive detention is well-settled and it can no longer be a valid contention that because the accused had been discharged in a criminal case, the ground of charge could not be relied upon by the appropriate authority passing an order of preventive detention. The former related to the punitive branch of criminal law and relied on the past commissions, the latter to the preventive branch of social defence and protected the community from future injury. It is not possible to urge that simply because a man has been discharged in a criminal case, those grounds could not be grounds for preventive detention. But there must be live-link between the grounds of criminal activities alleged by the detaining authority and the purpose of detention. This credible chain would be snapped if there was too long and unexplained an interval between the offending acts and the order of detention. There must be proximity, but no mechanical test of counting months of interval can be laid down—it depends on the nature of the acts alleged or relied, gravity of the situation and the reason for the delay. It is in that background only it can be said that causal connection is broken. The power to detain and the right to liberty must be harmoniously balanced in the larger interest of the community.

E *Dulal Roy v. The District Magistrate, Burdwan & Others* [1975] 1 SCC 837 stressed that the scheme of section 3(1) (a) of the Maintenance of Internal Security Act, 1971 presupposed that on the date of the order of detention or in the near future the person sought to be detained had or would have freedom of action. If a person therefore was serving a long term of imprisonment or was in jail custody as an undertrial and there was no immediate or early prospect of his being released on bail or otherwise, the authority could not legitimately be satisfied on the basis of his past history or antecedents that he was likely to indulge in similar prejudicial activities after his release in the distant or indefinite future. To the similar effect are the observations in *Dr. Ramakrishna Rawat v. District Magistrate, Jabalpur and Another*. [1975] 4 SCC 164 at 167 and 169.

G Mere service of detention order in jail *per se* is not bad.

H In *Vijay Narain Singh v. State of Bihar & Ors.*, [1984] 3 SCR 435 it was highlighted by two learned judges (O. Chinnappa Reddy & E.S. Venkataramiah, JJ) of the three judges bench consisting of O. Chinnappa Reddy, A.P. Sen & E.S. Venkataramiah, JJ. that the law of

preventive detention was a hard law and therefore should be strictly construed. Care should be taken that the liberty of the person was not jeopardized unless the case fell squarely within the four corners of the relevant law. The law of preventive detention was not to be used merely to clip the wings of the accused who was involved in a criminal prosecution. Where a person was enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which was treated on the very same charge which was to be tried by the criminal court. The Court was considering the expression 'habitual offender' under the Bihar Control of Crimes Act, 1981.

Assuming the facts alleged to be right and there is a causal connection between the facts alleged and the purpose of detention and the formation of the opinion is not mala fide, then the sufficiency of the grounds and the truth of the grounds is not germane. See the observations of this Court in *The Barium Chemicals Ltd. & Anr. v. The Company Law Board and Others* [1966] Supp. SCR 311 at 354 and 363.

It has to be borne in mind that having regard to the purpose of the Act, the detaining authority must take into consideration rational, proximate grounds and that should be the basis for the horoscope for the future so as to determine whether the person proposed to be detained comes within the mischief of the Act. If the person is in detention or is under trial and his conviction is unlikely but his conduct comes within the mischief of the Act then the authority is entitled to take a rational view of the matter. The grounds must be there. The decision must be bona fide.

In *Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala and Others* [1985] Supp. SCC 144 it was noted that preventive detention unlike punitive detention which was to punish for the wrong done, was to protect the society by preventing wrong being done. Though such powers under those Acts must be very cautiously exercised as not to undermine the fundamental freedoms guaranteed to our people, the procedural safeguards are to ensure that yet these must be looked at from a pragmatic and commonsense point of view. An understanding between those who exercised powers and the people over whom or in respect of whom such power is exercised is necessary. The purpose of exercise of all such powers by the Government must be to promote common well-being and must be to subserve the common good. It is necessary to protect therefore the individual rights insofar as practicable which are not inconsistent with the security and well-

A being of the society. Observance of written law about the procedural safeguards for the protection of the individual is normally the high duty of public official but in all circumstances not the highest. The law of self-preservation and protection of the country and national security may claim in certain circumstances higher priority.

B In *Shiv Ratan Makim s/o Nandlal Makim v. Union of India and Others* [1986] 1 SCC 404 it was stressed that the jurisdiction to make orders for preventive detention was different from that of judicial trial in courts for offences and of judicial orders for prevention of offences. Even unsuccessful judicial trial or proceeding would not operate as a bar to a detention order or render it *mala fide*. A fortiori therefore the mere fact that a criminal prosecution can be instituted cannot operate as a bar against the making of an order of detention. If an order of detention is made only in order to bypass a criminal prosecution which may be irksome because of the inconvenience of proving guilt in a court of law, it would certainly be an abuse of the power of preventive detention and the order of detention would be bad. But if the object of making the order of detention was to prevent the commission in future of activities injurious to the community, it would be a perfectly legitimate exercise of power to make the order of detention. The court would have to consider all the facts and circumstances of the case in order to determine on which side of the line the order of detention falls.

E In view of the aforesaid principles that emerged, it is necessary to consider the grounds and determine whether there are causal connections. The fact that a man is not in jail *per se* would not be determinative of the factor that order of preventive detention could not be passed against him. The fact that a man was found not guilty in a criminal trial would not also be determinative of the factors alleged therein. All these factors must be objectively considered and if there are causal connections and if *bona fide* belief was formed then there was nothing to prevent from serving an order of preventive detention even against a person who was in jail custody if there is imminent possibility of his being released and set at liberty if the detaining authority was duly satisfied.

G Before us no substantial point was made of infraction of any procedural safeguard engrafted in the Act. The documents relied on were duly supplied. We have examined that question from the records and materials available before us. Proper opportunity to make a rep-

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resentation was given and the representation made to the Advisory Board was duly considered by the Advisory Board. Their recommendations were also duly considered by the State Government. In the premises there is no substance in the grievance that the procedural safeguards had not been followed. It further appears to us that there was rational subjective satisfaction arrived at *bona fide* on the basis of the materials available to the detaining authority and the materials had rational nexus with the purpose and object of the detention as contemplated by the Act.

Judged by the standards laid down by various decisions mentioned hereinbefore and in view of the fact that procedural safeguards had been observed, we are of the opinion that there is no substance in the challenge made in the writ petition. We are further of the opinion that the High Court was right in dismissing the writ petition before it. Special leave application from the said decision therefore must fail and the writ petition filed in this Court also fails for the reasons indicated before.

A.P.J.

Petitions dismissed.

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