

AA **DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA**

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BB **[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]**

2010 211 bar 2101 /dt 2101 /to 011 2101A /w /mofobnd

*Constitution of India, 1950; Articles 21, 22(2) and 32/Tamil Nadu*

*Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest offenders, Goondas, Immoral traffic offenders and Slum grabbers Act, 1982;*

C) *Sections 2(f), 3 and 3(2):*

*Preventive detention of accused—Challenge to—Writ Petition—Held,*

*When a wrongful act committed by the accused, the degree and extent of such act and its effect upon the Society is judged to come to the conclusion whether*

D *such act was likely to cause disturbance of public order—Preventive detention of accused is not justified on a solitary instance of pelting stones against public while committing robbery—Direction for release of detenu ordered—Penal Code 1860; Section 379.*

**Petitioner-accused was an under trial prisoner, he having committed**  
E **offences of theft and robbery. The competent authority (detaining authority) passed an order of detention against accused under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest offenders, Goondas, Immoral traffic offenders and Slum grabbers Act, on the ground that he pelted stones against public while committing offence and his release on bail would be prejudicial to**  
F **the maintenance of public order. Hence the present writ petition.**

**It was contended for the petitioner that since it was a solitary instance of robbery which was not of such magnitude and intensity having any effect of disturbing the public order, right to life and liberty of detenu**  
G **was violated by the preventive detention order.**

**On behalf of the State, it was submitted that the detenu pelted stones against the public and created scare after a committing the offence of robbery and to prevent him from indulging in such activities, he was detained; and that his release on bail would be prejudicial to the**  
H **maintenance of public order.**

Allowing the writ petition, the Court

**HELD: 1.** Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest offenders, Goondas, Immoral traffic offenders and slum grabbers Act providing for preventive detention. [445-D, F]

**2.** In the instant case, the three alleged incidents of thefts arising under Section 379 of Indian Penal Code have been referred and there is only a solitary instance wherein the detenu is alleged to have robbed one person in a public place. There is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. [445-G, H; 446-A, B]

**3.** The solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. [446-B]

CRIMINAL APPELLATE JURISDICTION : Writ Petition (Criminal)  
No. 87/2002.

(Under Article 32 of the Constitution of India.)

A S.B. Upadhyay and Ms. Kumud Lata Das with him for the petitioners.

A.V. Rangam and Mrs. Revathy Raghavan with him for the Respondents.

The Judgment of the Court was delivered by

B **RAJENDRA BABU, J.** In this petition filed under Article 32 of the Constitution of India the petitioner is seeking for quashing of an order made under Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest offenders, Gonndas, Immoral traffic offenders and Slum grabbers Act, 1982 (Tamil Nadu Act 14 of 1982) [hereinafter referred to as 'the Act'] read with orders issued by the Government on 18th January, 2002 under Section 3(2) of the Act. The petitioner claims to be a resident of Delhi. He does not know Tamil language nor any member of his family is conversant with the said language.

D The detention of the petitioner is attacked on the ground that a solitary instance mentioned in the grounds of detention is not of such magnitude and intensity as to have the effect of disturbing the public order so as to pass an order under Section 3(1) of the Act; that the petitioner is already in judicial custody and is in jail as an under-trial prisoner and a mere possibility of his release on bail is not enough for the detaining authority to pass the impugned order; that the detention of the petitioner affects his right to life and liberty guaranteed under Article 21 of the Constitution and is also violative of Article 22(5) of the Constitution.

F In the return filed on behalf of the State, the Commissioner of Police submits that the petitioner came for adverse notice in three cases registered at various police stations, that is, in crime No. 377/2002 under Section 379 IPC falling within the jurisdiction of Periyamedu Police Station, crime No. 512/2002 under Section 379 IPC coming within the jurisdiction of Chennai Central Railway Station Police Station and crime No. 332/2002 under Section 379 IPC coming within the jurisdiction of Tambaram Railway Police Station; that in the present case, he was found committing robbery of Rs. 1000 from one Kumar at the point of knife and disturbing even tempo of life of the public; that after his arrest when he was examined, he admitted about the commission of these offences and was produced before the learned Metropolitan Magistrate at Chennai and was thereafter lodged at the Central Prison, Chennai as an under-trial prisoner. The contention that the detention of the petitioner is based on the solitary instance is refuted on the basis that

H in addition to the ground disclosed in the order of detention there were three

other cases registered at different Police Stations against the petitioner. The Commissioner of Police stated that he was found committing robbery from one Kumar at the point of knife and when the public rushed to apprehend him, he picked up stones and pelted the same against the public and created a scare affecting the even tempo of the life of the public and as such his activities would fall within the scope of Section 2(f) of the Act and to prevent him from indulging in such activities in future he was detained under the Act; that though the petitioner was detained in prison, likelihood of his being released on bail was an imminent possibility enabling him to indulge in similar activities which would be prejudicial to the maintenance of public order and the normal criminal law would not have the desired effect of effectively preventing the detenu from indulging in such activities.

The learned counsel for the petitioner sought to rely upon the decisions of this Court in *Smt. Shashi Aggarwal v. State of U.P. and Ors.*, [1988] 1 SCC 436 and *T. Devaki v. Government of Tamil Nadu & Ors.*, [1990] 2 SCC 456.

The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs. 1000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. Under the definitions in the Act it is stated that in the case of "Goonda" the acts prejudicial to public order are 'when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order'. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order is a question of degree and the extent of the reach of the act upon the society; that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so as to bring the case within the purview of the Act providing for preventive detention.

In the present case, the three alleged incidents to which the Commissioner of Police has referred to are thefts arising under Section 379 IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the

A A community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents.

B We direct the release of the detenu forthwith; if he is to required to be detained with respect to any other matter arising under law. The petition is allowed accordingly.

C S.K.S. Petition allowed.

D The order of detention is quashed. The detenu is to be released forthwith. The petition is allowed accordingly.

E The order of detention is quashed. The detenu is to be released forthwith. The petition is allowed accordingly.