

Kanaram Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-23-1990

Reported in : 1991(1)WLN345

Judge : Mohinikapur and; Navin Chandra Sharma, JJ.

Appeal No. : D.B. Habeas Corpus Petition No. 5362 of 1989

Appellant : Kanaram

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

N.C. Sharma, J.

1. Ramlal, real younger brother of Kanaram petitioner, has filed this habeas corpus writ petition, for quashing the order of the District Magistrate, Ajmer, dated Aug. 1, '89, whereby, the District Magistrate, Ajmer on being satisfied that with a view to prevent the petitioner from acting in the manner prejudicial to public order, it was necessary to detain him under the provisions contained in National Security Act, 1980 (hereinafter, for short 'the Act'), ordered his detention; the order containing the grounds of detention served upon the petitioner by the District Magistrate, Ajmer, dated Aug. 3,'89; the confirmation [order of the State Government dated

Aug. 10, '89; and the order dated Sept. 21, '89, whereby, the State Government further confirmed the detention-order of the petitioner.

2. According to the petitioner, he was under arrest in the Criminal Case, registered in pursuance of FIR No. 132/89 Under Sections 152 and 327, IPC. In this Criminal Case, the petitioner was granted bail on July 26, '89. However, there was one more case against the petitioner, registered in pursuance of FIR No. 155/89 of PS--Kishangarh, Under Sections 392 and 394, IPC. In that case also, the petitioner was arrested on July 27, '89, at 3.30 PM. In this latter case, the petitioner was released on bail on Aug. 2, '89. But, on that very date, under the detention-order dated Aug. 1, '89, passed by the District Magistrate, Ajmer, (Ann. 1), Under Sub-section (2) read with Sub-section (3) of Section 3 of the Act, he was taken into custody. A memorandum of the grounds of detention and the relevant documents were delivered to the petitioner by the District Magistrate on Aug. 3, '89. The State confirmed the order of detention passed by the District Magistrate, Ajmer, by its order dated Aug. 10, '89 (Ann.3). The petitioner was required to attend the meeting of Advisory Board which was going to be held on Aug. 26, '89. The petitioner submitted his representation before the Advisory Board. Thereafter, the petitioner received an order dated Sept. 21, '89, issued by the Home Commissioner, whereby, the petitioner was intimated that the Advisory Board had given its opinion that there were sufficient grounds for the detention of the petitioner, and on the basis of the report of the Advisory Board, the State Government confirmed and ordered the detention of the petitioner for a period of one year from Aug. 2, '89 to Aug. 1, '90.

3. The petitioner filed the present writ petition on Nov. 10, '89, challenging the aforesaid orders. The petitioner has stated that as back as in the year 1974, an offence of minor nature was registered against the petitioner by the police in Jaipur District. The petitioner was earning his livelihood from agriculture, in village-Chundadi, situated at 1km. north of the National Highway No. 8. On the southern side of the National Highway, there was a village-Badagaon, at a distance of 1 km; and in between the Villages Chundadi and Badagaon, there was situated a bus-stand. According to the petitioner, near this bus-stand, there flourished prostitution-trade, with the help of police administration, and on account of that, the

residents of both the villages had raised voice before the administration as against this open women flesh-trade. The petitioner had complained that the police was taking Rs. 500/- or Rs. 600/- per month for one girl and allowed persons to indulge in prostitution. It is stated that the cases were registered against the petitioner by the police, one after another, and that after 1988, they were based on imaginary facts, which were outcome of enmity.

4. The petitioner's case is that he had been detained under the Act by the State Government, in order to prevent him from acting in any manner prejudicial to the maintenance of public order. He states that the cases registered against him by the police were not of such nature which disturbed, the current of life of the community so as to amount to disturbance of public order. The case were registered on account of enmity and encouragement on the part of the police and 'NUTS' who were indulged in prostitution-business in Village-Badagaon. It is asserted that the petitioner was not acting in any manner which was prejudicial to the maintenance of public order. The petitioner was released on bail in the two Criminal Cases, which had been registered against him in pursuance of FIR Nos. 132/89 and 155/89. The meaning of public order' as mentioned in the Act had not been correctly appreciated, and it had been mingled with ordinary order or problem. The petitioner further states that he has been prejudiced in his defence as the relevant documents and papers were not supplied to him. Lastly, it is pleaded that the respondents have not complied with the mandatory provisions of Sub-section (5) of Section 3 of the Act.

5. The writ petition has been opposed by respondent No. 1 by its reply dated Jan. 4, '90. The State of Rajasthan has stated that the criminal activities of the petitioner's brother were prejudicial to the maintenance of public order, and as such, on the basis of the report submitted by the Superintendent of Police, the District Magistrate, Ajmer, after satisfying himself of the grounds of detention and supporting documents, passed the impugned detention-order. It is admitted that the petitioner was granted bail in the Criminal Case registered in pursuance of FIR No. 132/89, and that he was also likely to be released on bail in the other Criminal Case. The detention-order was approved by the State Government on Aug. 10, '89. The matter was also referred to the Advisory Board on Aug. 14, '89. The

Advisory Board fixed its meeting for Aug. 26, '89, and after considering the whole record and the representation filed by the detenu, gave its opinion that there were sufficient grounds for his detention. This opinion of the Advisory Board, was accepted by the State Government on Sept. 8, '89. The petitioner had submitted a representation before the Advisory Board, and the same had been considered. The Grounds Nos. 12 to 19 of the Grounds of Detention were with regard to serious offences regarding robbery and assault in broad daylight and against innocent persons. The activities of the petitioner were creating terror-waves in the mind of common man, and as such, they were against the public order. The details of criminal activities of the detenu were also mentioned in the grounds of detention. After considering the representation made by the petitioner, the State Government was free to make the order of his detention.

6. The District Magistrate, Ajmer, being satisfied with respect to the petitioner that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to make an order directing that the petitioner be detained, passed the order dated Aug. 1, '89, in exercise of the powers conferred upon him by Sub-section (2) of Section 3 of the Act, read with Sub-section (3) thereof. In pursuance of this order, the petitioner was taken into custody by the local police of Kishangarh on Aug. 2, '89, and he was detained in Central Jail, Ajmer. On Aug. 3, '89, a memorandum containing the grounds of detention, along with the relevant documents, was delivered to the petitioner. The District Magistrate reported this fact to the State Government; and on Aug. 10, '89, the State Government confirmed the order of detention passed by the District Magistrate. The petitioner was informed of this fact by the District Magistrate, by his letter dated Aug. 11, '89 (Ann. 4). The State Government placed before the Advisory Board, constituted Under Section 9 of the Act, the grounds on which the order of detention had been made, together with the representation, received from the petitioner. The petitioner was directed by the District Magistrate, Ajmer, vide his letter dated Aug. 23, '89 (Ann.6), to appear before the Advisory Board, to represent his case. The petitioner made a representation before the Advisory Board. The Advisory Board, after considering the material placed before it, and after hearing the petitioner, submitted its report to the State Government. It reported that there were sufficient grounds to detain the petitioner under the Act.

The State Government accordingly confirmed the detention-order and its continuance for a period of one year from the date of detention.

7. In the grounds of detention, the District Magistrate has mentioned that from the information and the documents furnished to him, by the Superintendent of Police, Ajmer, it was clear that the petitioner was involved in criminal activities in Jaipur and Ajmer Districts since 1974, and as a result of the same, terror has been spread in Ajmer and nearby districts. It was said that the petitioner, along with his associates, had formed a gang and had committed criminal offences in Ajmer and Jaipur Districts, which were prejudicial to public order. It was mentioned that near village-Badagaon, on the National Highway, on Jaipur-Ajmer road, drivers of the trucks used to stop their trucks at the hotels. The petitioner demanded from the drivers, money, in order to take liquor; and that if the drivers refused to pay him money for the said purpose, the petitioner caused to be done to them bodily hurt of dangerous nature. He also snatched currency-notes and other goods on the National Highway. Out of fear, most of the persons did not lodge report as in case, some no lodged one with the police, it was practice of the petitioner to assault those persons.

8. The District Magistrate, Ajmer, has listed 21 Criminal Cases, which have been launched by the police against the petitioner during the period from the year 1974 to March, 1989. It appears that on Sept. 22, '74, one Gulla, son of Gheesa, had lodged a First Information Report (FIR) at PS- Dudu, that on Sept. 17, '74, the petitioner had broken open the lock of the house of Gulla and committed theft of silver ornaments and cash from his house. A Criminal case No. 94/74 was registered against the petitioner Under Sections 454 and 380, IPC, and after investigation, a charge-sheet was filed against him on Dec. 31, '75. In that Criminal Case, after trial, the Additional Munsif-cum-Judicial Magistrate, Sambhar-Lake, convicted and sentenced the petitioner on Apr.14, '76, for the said offences. He was sentenced to 3 years' imprisonment for the offence Under Section 454, IPC and a fine of Rs. 500/-; and to imprisonment for 2 years, for that Under Section 380, IPC. The petitioner underwent these sentences in Central Jail, Jaipur and Udaipur. After his release from the jail, in the beginning of 1978, there was another FIR lodged by Allah Noor, against the petitioner and his associates, with the

accusation that the petitioner and his associates had caused simple hurt on him after entering into a 'Guada'. A charge-sheet was filed against the petitioner; and after trial, the Judicial Magistrate-Kishangarh, by his judgment dated June 6, '81, found the petitioner guilty of the said offence. The petitioner was, however, given the benefit Under Section 4(1) of the Probation of Offenders Act, 1958.

9. The third case started with an FIR, lodged by one Ramrikh on Sept.8, '79, regarding theft of silver and gold ornaments form his house. A charge-sheet was filed against the petitioner on Nov. 24, '79. But, in the trial, benefit of doubt was given to him and he was acquitted.

10. On Sept. 16, '79, Ranglal lodged a report against the petitioner, with regard to theft of a cycle and some cash amounts, and the theft was allegedly committed by him. On filing of a charge-sheet against the petitioner, the case was tried by the Judicial Magistrate-Kishangarh, who by his judgment dated Nov. 21, '81, found the petitioner guilty of offences Under Sections 454 and 380, IPC, and sentenced him to rigorous imprisonment for 11/2 years in respect of each of the two offences separately. The petitioner filed an appeal against his conviction and sentence, which was allowed on June 4, '87, and the petitioner was acquitted by the Sessions Judge, Ajmer.

11. The next Criminal Case against the petitioner also related to theft including that of ornamentas and cash. This case was initiated on account of an FIR, lodged by Jawaharlal, on Sept. 2, '79. The police filed a charge-sheet; and after the trial, the Magistrate sentenced the petitioner to 2 years' imprisonment and a fine of Rs. 500/-. The petitioner has filed against this conviction, and the said appeal is pending in the court of Additional Sessions Judge No. 1, Ajmer.

12. The sixth case related to an attempt to commit house- trespass, and it was initiated on account of an FIR, lodged by one Shravan, on Sept. 18, '79. In this Criminal Case, the prosecution witnesses became hostile, and the petitioner was acquitted.

13. The next case was again a theft case of gold 'Bor' and some cash amount. A charge-sheet was filed against the petitioner on Oct. 18, '79. After trial, the

petitioner was sentenced to 1 1/2 years' rigorous imprisonment. This sentence was passed by the Judicial Magistrate-Kishangarh, on May 28, '82. The period during which the petitioner had been in jail during the trial, was allowed to be set-off against the sentence.

14. The next case was also that of theft of some ornaments. The case was initiated on an FIR, lodged by one Jaganath, on Sept. 29, '79. After trial, the petitioner was sentenced to 2 Year's rigorous imprisonment and a fine of Rs. 500/- . The petitioner has filed an appeal against this conviction, and the same is pending in the court of Additional Sessions Judge No. 1, Ajmer.

15. The ninth case was also of theft of some fodder lying in the field. After investigation, a challan was filed against the petitioner, for offence Under Section 379, IPC; and on Mar. 30, '81, the petitioner was sentenced to imprisonment for 5 months. Against this conviction also, an appeal is pending before the Additional Sessions Judge No. 1. Ajmer.

16. Thereafter, it was on Aug. 2, '84, that Ganpatlal lodged an FIR with respect to offences Under Sections 147,148, 452, 327 and 323, IPC. The trial of this case is still pending.

17. On Jan. 10, '86, Modu lodged an FIR. A challan was filed and the trial is still pending.

18. On Feb. 27, '88, Geesharm lodged and FIR against the petitioner and his associates for having caused injuries to Teju. A case Under Sections 325, 324 and 323, IPC, was registered at PS- Kishangarh. After investigation, a charge-sheet was filed by the police on Mar. 19, '88, and the challan is pending before the ACJM, Kishangarh.

19. The thirteenth Criminal case against the petitioner was at the instance of Jeewanram, who lodged the FIR on Apr. 26, '88, alleging that the petitioner had burnt his tractor. A charge- sheet was filed against the petitioner on June 13, '88, and the criminal trial of this offence is pending against him, in the court of ACJM, Kishangarh.

20. Then, on Nov. 27, '88, one Bharmal lodged an FIR against the petitioner and his brother Ramlal, to the effect that the petitioner had inflicted injuries with 'lakdi', on Bharmal. A case Under Sections 341 and 323, IPC, was registered, and the trial is still pending in the court of ACJM- Kishangarh.

21. Then, there was an FIR by Chhitar Singh, Constable, lodged on Jan. 1, '89, stating therein that he had gone to arrest Malaram and Ramlal, but, the petitioner rescued these two persons and inflicted injuries on the arresting party. A criminal case in this respect is also pending in the trial court.

22. The sixteenth case has been initiated on the basis of a written-report lodged by Raghuveer Singh, SHO, PS- Kishangarh, mentioning therein that when he had gone to arrest the petitioner, the latter, with an intent to commit suicide, jumped into the well of Heera, son of Chhitar Jat. The petitioner was taken out of the well with the aid of Fire-Brigade. A charge- sheet for offence Under Section 309. IPC, was filed against the petitioner; and this case is pending trial in the court of ACJM- Kishangarh.

23. The seventeenth case was initiated on a report by Shambhusingh on Feb. 7, '89, to the effect that Kanaram and his brothers had snatched away a wrist-watch; an amount of Rs. 210/-; and also a blanket, from Shambhusingh and his companion Motisingh. The trial in relation to this case is also pending in the trial court.

24. Then, there is the eighteenth case initiated on a police-report by Rama Bagriya lodged on July 4, '89, stating that on July 3, '89, the petitioner had demanded money from Rama, for taking liquor. When Rama refused to give him the money, he was beaten up by the petitioner, Mala and Sravan. A Criminal Case in this respect is pending against the petitioner in the trial court.

25. The next case is of robbery, which was registered against the petitioner on the basis of an FIR lodged by Kishanlal Sindhi on July 27, '89, relating to robbery of a wrist-watch and a purse containing an amount of Rs. 45/- A Criminal case in this respect is also pending in the trial court.

26. The Officer-in-Charge of PS-Kishangarh, on Jan.18, '89, filed a Criminal Complaint No. 1/89, against the petitioner Under Sections 41/110, Cr.P.C.

27. The last of the Criminal Cases against the petitioner file complaint by the Officer-in-Charge of PS-Kishangarh, on March 13, '89 Under Section 3 of the Rajasthan Goondas Control Act, and this case is pending before the District Magistrate, Ajmer.

28. It was mentioned that in Criminal Cases Nos. 132/89 and 155/89, the petitioner was respectively in judicial custody and police custody remands, and he was likely to be released on bail.

29. The petitioner has asserted that he was released on bail on Aug. 2, '89, and on the very date, he was taken into custody on account of the order of the District Magistrate, Ajmer, dated Aug. 1, '89, passed Under Section 3(2) of the Act.

30. These were the grounds on which, the District Magistrate, Ajmer, had passed the detention-order and which was approved by the State Government and confirmed by the Advisory Board. The petitioner has challenged his detention and has prayed for a writ of habeas corpus directing his release, after quashing the detention-order Aug. 1, '89 (Ann.1) and other consequential orders passed in relation to his detention.

31. It was contended by the learned Counsel for the petitioner that the alleged grounds on which the detention of the petitioner was made, could not lead to the satisfaction that the petitioner was acting in any manner prejudicial to public order. It was urged that the District Magistrate, Ajmer, has failed to understand the distinction between disturbance of law and order; and acts prejudicial to public order.

32. It was next contended that the petitioner was going to be released on bail on Aug. 2, '89, and he was taken into custody under the impugned order of the District Magistrate, on that very date; and that the District Magistrate has not recorded any reason to show that the detention of the petitioner was warranted according to the provisions of Section 3 of the Act.

33. It was also argued that the grounds mentioned in the order of detention, related to old cases, and that in these cases, the petitioner was on bail and some of them were decided in his favour. In the cases which are still pending in Criminal Courts, the petitioner is on bail.

34. Lastly, it has been urged that the respondents had not complied with the mandatory provisions of Section 3 of the Act.

35. As against this, Mr. M.I. Khan, the learned Additional Advocate General has urged that on the basis of the records submitted by the Superintendent of Police, Ajmer, supported by documents, the District Magistrate, Ajmer, was satisfied that the criminal activities of the petitioner were prejudicial to the maintenance of public life. The offences committed by the petitioner were of serious nature, and the petitioner was creating a wave of terror and public at large was feeling insecure. Consequently, it was argued that the activities of the petitioner were prejudicial to the maintenance of public order. The District Magistrate, Ajmer, had considered the fact that the petitioner was on bail in certain cases and that he was likely to be enlarged on bail in some other cases. Some of the Criminal Cases were of the years 1988-89. And, the past criminal record of the petitioner was also taken into consideration. The detention-order of the petitioner was confirmed by the State Government on Aug. 10, '89. The petitioner made a representation on Aug. 14, '89; and the Advisory Board, after considering the whole record and the representation filed by the detenu, had conveyed its opinion to the State Government, holding the detention to be justified. It is said that the detenu attempted to commit suicide, and a case Under Section 309, IPC, was registered against him. The Central Government has been informed of the approval of the detention-order on Aug. 10, '89. Thus, according to the respondents, the detention of the petitioner was in accordance with the provisions contained in the Act, and that there has been no violation of the fundamental rights guaranteed by Article 21 of the Constitution or of the safeguards provided by Article 22.

36. The decision in *Romesh Thappar v. State of Madras* AIR 1954 SC 124 established two propositions, viz., (1) maintenance of public order is equated with maintenance of public tranquillity; and (2) the offences against public order are

divided into two categories, viz., (a) major offences affecting the security of the State; and (b) relatively minor offences involving breaches of the peace of purely local significance treating for this purpose the difference and degree as it they were differences in kind. The decision in Romesh Thappar's case (supra) was followed by the learned Judge of the Supreme Court in Brij Bhushan and Anr. v. State of Delhi : 1950 CriLJ1525 .

37. In Rex v. Basudeva AIR 1950 FC 67, the appellant was detained in pursuance of the order made by the Government of Uttar Pradesh, under the U.P. Prevention of Blackmarketing (Temporary Powers) Act, 1947. Patanjali Sastri, J. observed therein:..Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot fall within the purview of Entry 1 of List-II.....The connection contemplated must, in our view, be real and proximate, not far-fetched or problematical.

38. In Superintendent, Central Prison, Fatehgarh, and Anr. v. Dr. Ram Manohar Lohia : 1960 CriLJ1002 , the decision in Rex v. Basudeva (supra) was sought to have laid down the correct law. In Superintendent, Central Prison, Fatehgarh and Anr. v. Dr. Ram Manohar Lohia (supra), the question related to the interpretation of the words, 'in the interest of public order', used in Article 19(2) of the Constitution. The contention advanced by the learned Advocate General was that the words, 'In the interest of public order', in Section 3 of the U.P. Special Powers Act, 1932, were wider in connotation than the words, 'for the maintenance of public order'. It was held that in India, Under Article 19(2) of the Constitution, the wide concept of public order was split up under different heads. It enabled imposition of reasonable restrictions in the interest of the security of the State, friendly-relations with foreign State, public order, decency or morality, or in relation to contempt of Court, defamation or incitement of an offence. All the grounds mentioned therein can be brought under the general heard 'public order' in its most comprehensive sense; but, the juxtaposition of the different grounds in Article 19(2), though they sometimes tend to overlap, they must be ordinarily intended to exclude each other. It was held that it can be postulated that public order is synonymous with public peace, safety and tranquillity.

39. The other case of Dr. Ram Manohar Lohia v. State of Bihar : 1966 CriLJ608 directly dealt with the case of detention of Dr. Lohia, purported to have been made by the District Magistrate, Patna, Under Rule-30(1)(b) of Defence of India Rules, 1962. Section 3 of the Defence of India Act, 1962 gave the Central Government power to make rules providing for detention of persons without trial for the various reasons mentioned therein. Rule-30(1)(b), under which the order of detention of Dr. Lohia was made, was framed Under Section 3; and this rule was in the following terms. The Central Government or the State Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence, the public safety, the maintenance of peaceful condition in any parts of India, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community, it is necessary to do so, may make an order-(a)-.....(b) directing that he be detained. The order of detention issued by the District Magistrate, Patna, recorded its satisfaction that with a view to preventing Dr. Ram Manohar Lohia from acting in any manner prejudicial to the public safety and the maintenance of law and order, it was necessary to make an order that he be detained. It is important to note that Rule30(1)(b) of the Defence of India Rules (DIR) provided for detention of a person with a view to the maintenance of public order; but, the order of detention issued by the District Magistrate, Patna, used the expression, 'and the maintenance of law and order'. It was urged by Dr. Ram Manohar Lohia, who argued the case in person, that public order and law and order are not the same thing, and therefore, his detention was illegal. The contention was upheld by the Supreme Court. His Lordship, Sarkar, J. observed therein:..It would, therefore, be legitimate to hold that by maintenance of public order what was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation. It is conceivable that expression 'maintenance of law and order' occurring in the detention order may not have been used in the sense of prevention of disorder of a grave nature. The expression may mean prevention of disorder of comparatively lesser gravity and of local significance only.

40. Hidayatullah, J. said:

One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State.....Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder.....Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order, but it raises the apprehension of public disorder.

41. In the above case of Dr. Ram Manohar Lohia (supra), the order of the District Magistrate was struck down.

42. In Pushakar Mukherjee and Ors. v. The State of West Bengal : 1970 CriLJ852 , decided on Nov. 7, '68, the grounds of detention against petitioner No. 5 inter alia were that on Oct. 8, '66, he demanded money from one Mahesh Prasad Bhagal, and on his refusal, he hurled cracker at him causing grievous injury on his left leg. The other ground was that on June 8, '67, he whipped out a dagger and assaulted Biswas on his hand. It was also alleged that the detenu hurled cracker at ASIB. Kundu of Bantra and damaged the wireless-van. It was held in that case that these grounds related to cases of assault on solitary individual, either by knife or by using crackers; and that it was difficult to accept that these grounds had any relevance or proximate connection with the maintenance of public order.

43. In Sushant Goswami's case (AIR 1969 SC 1004), the grounds of detention against Sushant Goswami inter alia were that he had formed an unlawful assembly and assaulted Pranab Bose and snatched away a fountain-pen of Rs. 10/- and uttered indecent language to Smt. Sipra Kundu. The typical grounds were that the petitioner had committed offences of forming an unlawful assembly; assaulting the police and powerful inhabitants; snatching away of cash and valuables; teasing school-girls and criminal intimidation. It was held in that case that the above grounds were not relevant to public order and when some of the grounds were irrelevant, the order of detention could not be upheld. The cases of other petitioners against whom the grounds were of assault, snatching of wrist-watch, burglary, ugly gesture towards some women etc., were held to be concerned with the question of law and order and not of public order. In this case,

reliance was placed on the decision in Mukherjee's case (supra).

44. The next decision is in the case of Arun Ghosh v. State of West Bengal : 1970 CriLJ1136 . In this case, the grounds of detention against the detenu were as under:

45. In the above case of Arun Ghosh (supra), his Lordship Hidayatullah, CJ observed as under::

Public order was said to embraced more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general, disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a Ideality which undermines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but, the life of the community keeps moving at an even tempo, however, much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is zeopardized, because, the repercussions of the act embrace large sections of the community and incite them to make further breaches of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality, it may not differ from another but in its potentiality, it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber-maids. He may annoy them and also the manager, but, he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls, but, even then, it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities, girls going to colleges and schools are in constant danger and fear. Woman going for their ordinary business are afraid of being way laid and assaulted. The activity of this man in its essential quality is not

different from the act of the other man, but, in its potentiality and in its effect upon the public tranquillity, there is a vast difference. The act of the man who molests girls in lonely places, causes a disturbance in the even tempo of living, which is the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken not of by the criminal prosecution agencies. It means, therefore, that the question whether a man has only committed breach of law and order or has acted in a manner to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.

46. On the merits of the above case of Arun Ghosh (supra), it was held that all acts of molestation were directed against the family of Phanindra Chandra Das and were not directed against women in general from a locality. The assaults were also directed against the individuals and were in the nature of private crimes. Their Lordships distinguished the case from the decision in Writ Petition No. 102/69 (SC) (Shyamlal Chakraborty v. Commissioner of Police, decided on Aug. 4, '69), In Shyamlal Chakraborty's case (supra), three instances of rioting, armed with lathis, iron-rods and acid-bulbs etc. was held to be sufficient to disturb the even tempo of public life in the locality and was treated as disturbance of public order.

47. In Nagendra Nath Mondal v. State of West Bengal : 1972 CriLJ482 , the grounds of detention against the detenu were that on Dec. 1, '70, Nagendra Nath, along with others had entered into the Headmaster's room of Moinaguri Higher Secondary School, after breaking open the doors and set fire to books, registers, typewriter, furniture etc. causing heavy loss to the school. The other ground was that on Apr. 5, '71, the detenu, along with others had forcibly entered into the said school and set fire to the officer-room and the Headmaster's room of the school, with the help of kerosene-oil, causing damage to books, almirahs and other articles. His Lordship Shelat, J. in that case, stated:

The target of arson was an educational institution and particularly the registers and other papers maintained by it. The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching

staff nor the pupils would dare attend it for prosecution of studies.....The acts in question, no doubt, would be acts similar to those committed by a person who resorts to arson, but in the circumstances were acts different in potentiality, and therefore, fell within the definition contained in Section 3(2) (b) of the West Bengal (Prevention of Violent Activities) Act, 1970.

48. The Moynaguri Higher Secondary School was the center of activities in *Sasthi Chandra Roy v. State of West Bengal* : 1972 CriLJ1277 , and the grounds were similar to that in *Nagendra Nath Mondal's case* (supra); and the acts were held to constitute disturbance of public order.

49. In *Babulal Mitra v. State of West Bengal* : 1974 CriLJ395 , the grounds of detention were that on Apr. 16, '71, the detenu, along with Barun Chaudhary, forced into Moynaguri Higher Secondary School, apprehended the school staff from acting in resistance, and set fire to school. The other grounds was that on June 29, '71, the detenu had a bomb and he made attempt to throw the bomb at the police personnel, at the time of his arrest. It was held that they were grounds which showed that order was disturbed.

50. Two of the three grounds in *Kuso Shah v. State of Bihar* : 1975 CriLJ543 , were that on Jan 20, '71, the detenu and his brother were loading two trucks with stolen railway-property in Car No. WBJ-6949. On Railway-Crossing, other standing trucks on the road, caused a 'bottle-neck' in his hurried journey. This led to a clash; and his men assaulted the truck-drivers, and threatened them with firearms. Some 15 of his men were arrested then and there. The other ground was that he had assaulted the District Superintendent of Sales-Tax, who had gone to his factory in the course of discharge of his legal obligations. His Lordship Chandrachud, J., speaking for the Court, held that those acts might raise problems of law and order, but not of public order. His Lordship observed:

The two concepts have well defined contours, it being well-established that stray and unorganised 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.

51. In *Dhena Hembram v. District Magistrate, West Dinajpur* : 1975 CriLJ1549 , the detenu was alleged to have committed two dacoities one after the other, within a period of two months. In the course of both the occurrences, he was said to have used firearms and threatened the witnesses, and therefore, nobody was available to depose against him. This was held to have disturbed public order.

52. In *Ram Ranjan Chatterjee v. State of West Bengal* : 1975 CriLJ588 , it was held that the distinction between public order and law and order is one of degree; and that exploding of bombs is an attempt at extortion on pain of death and was enough to cause disturbing of public order.

53. In *Ashok Kumar v. Delhi Administration* : 1982 CriLJ1191 , it was observed:

It was the potentiality of the act to disturb the even tempo of the life of the community, which makes it prejudicial to the maintenance of public order.

54. In *State of U.P. v. Hari Shankar* : 1987 CriLJ840 , his Lordship R.N. Mishra, J., speaking for the Court, observed;

In the final analysis, therefore, one has to turn to the facts of each case to ascertain whether the matter relates to the larger circle or the smaller circle. An act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquility. When communal tension is high, an indiscreet act of no significance is likely to disturb or dislocate the even tempo of the life of the community. An order of detention made in such a situation has to take note of the potentiality of the act objected to. No hard and fast rule can really be evolved to deal with problems of human society. Every possible situation cannot be brought under watertight classifications and a set of tests to deal with them cannot be laid down. As and when an order of detention is questioned, it is for the Court to apply these well-known tests to find out whether the impugned activities upon which the order or detention is grounded go under the classification of public order or belong to the category of law and order.

55. In *State of U.P. v. Kamal Kishore Saini* : 1988 CriLJ405 , the grounds of detention were that on June 4, '85, an FIR was lodged by Jeet Narayan that his

younger brother Vishnu Narayan had left to sleep at their house in Indira Nagar, Lucknow. At night, he was informed that his brother had been shot by certain persons; and when he reached the spot, he found his brother lying dead in a pool of blood. The names of the detenus figured during investigation. The next ground was that on June 13, '85, Baldeo Prasad Awasthy lodged a report at the police station that the detenus had come on a scooter and fired twice or thrice, resulting in the death of Ramkumar and Nandkishore. The third ground was that Balram Pandey, accompanied by other police- men, were bringing back the accused persons after their production in the court of CJM, Lucknow. The detenus proceeded towards an accused Vijay Pratap Singh. Both the detenus fired pistol-shots, killing Vijay Pratap Singh. The first incident was held to be confined to individual persons, and therefore, did not affect the even tempo of the life of the community. However the second incident was committed on a public-street during the day- time, and it was held that it disturbed the public order. The third incident also affected the public order and not merely law and order.

56. It is thus well-settled that whether an act relates to law and order or public order, depends upon the effects of the act, on the life of the community or in other words the reach and effect and potentiality of the act; if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public order [see *Gulab Mehra v. State of U.P.* : 1988 CriLJ168].

57. In *Yogendra Murari V State of U.P.* : 1988 CriLJ1825 , the District Magistrate had mentioned three incidents in the grounds, served on the detenu,-(a) the detenu v/as alleged to have fired with a revolver at one Azam with the intention to kill him, but, he narrowly escaped. As a result of this, terror had spread over in the entire area, and all the shop-keepers who had their shops in the nearby locality, closed down their shops; (b) the detenu made another bid to kill another person named Aziz, who narrowly escaped; and (c) on July 27, '87, the detenu and his colleagues killed Aziz in front of Lucknow District Jail. The Jail Authorities returned the fire, and the detenu then threw a hand-granade. He also hurled bombs and indiscrimintely fired from his pistol. The High Court had not considered it essential to decide whether the first two incidents were referable to public order, as it held that the third ground, by itself, was capable of sustaining the detention-order. It

was held that the order could not be quashed, because, some of the incidents did not relate to public order.

58. In the light of the law laid down in the above decisions, it is quite clear that in each case, it will have to be decided by the Court, whether the grounds relate to disturbance of public order or they relate only to law and order. So far as the grounds of detention in the present case are concerned, it is clear that the first incident related to the year 1974. The detenu is alleged to have broken open the house of Gulla and committed theft of silver-ornaments and cash. He had been convicted and sentenced to 2 years' imprisonment, for the offence Under Section 380, IPC; and he has already undergone that sentence. He must have been in jail upto the beginning of the year 1978. In the next incident, the detenu caused simple hurt to Allah Noor. He was given the benefit of Section 4(1) of the Probation of Offenders Act, 1958. In the third case, relating to theft, the detenu was acquitted. In the fourth case, launched on the report of Ranglal, the detenu was acquitted by the Sessions Judge in appeal. The matter related to an alleged theft of a cycle and some cash amount. The next incident also relates to theft of ornaments and cash of Jawaharlal. The detenu has been sentenced by the trial court, but, his appeal is pending before the Additional Sessions Judge. In the sixth incident of alleged house-trespass, the detenu was acquitted. The seventh incident related to theft of gold 'Bor' and some cash amount. In this case, the detenu was sentenced to 1 1/2 years' imprisonment. He had been in jail during the trial; and therefore, the sentence awarded stood set off against the period during which the detenu had been in jail. The other case was of theft of ornaments, on the FIR lodged by Jagan Nath. The detenu's appeal against his conviction and sentence, is pending before the Sessions Judge. The next incident relates to alleged theft of fodder. The detenu was sentenced to 5 months imprisonment, and his appeal is pending before the Additional Sessions Judge. In relation to other matters, the trial is pending in the court of Judicial Magistrate. These cases jointly relate to causing hurt, burning of tractor, attempt to commit suicide, snatching of wrist-watch and demanding of money for taking liquor. All these alleged incidents were against different individuals. None of them was grave offence disturbing the even tempo of the life of the community. None of the incidents can be said to have disturbed in anyway, public tranquillity or public order. All the grounds are

connected with law and order, and none with public order. The detention-order of Kanaram Under Section 3(2) of the Act, read with Sub-section (3) thereof, cannot, therefore, be sustained.

59. It is, therefore, not necessary for us to examine the other contention that the District Magistrate had not considered that the grant of bail to the detenu in two other Criminal Cases would have the effect of his acting in a manner prejudicial to public order. However, it is clear from the grounds supplied by the District Magistrate, Ajmer, that the District Magistrate had in his mind, the fact regarding the likelihood of the detenu being released on bail, and that after release on bail, he was likely to commit acts disturbing public order. That consideration was there in the mind of the District Magistrate; and the order of detention cannot be said to be bad on the ground that none of the grounds of detention, related to disturbance of public order, and therefore, the conditions mentioned in Section 3(2) of the Act, are not satisfied.

60. We, therefore, allow this habeas corpus petition, and quash the order of detention, passed by the District Magistrate, Ajmer, on Aug. 1, '89 (Ann. 1), ordering for the detention of Kana Ram detenu; and also the subsequent orders (Annexures 2,3, 4 and 11) appended to the writ petition. We direct that detenu Kana Ram, son of Ramchander Jat, of Village-Chundadi, presently confined in Central Jail, Ajmer, in pursuance of the aforesaid detention-order, shall forthwith be released from detention, if he is not wanted in any other case.