(1999) 10 AHC CK 0148

Allahabad High Court

Case No: Criminal Miscellaneous Habeas Corpus Writ Petition No. 34770 of 1999

Sanjai Singh		APPELLANT
	Vs	
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision: Oct. 14, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Law (Amendment) Act, 1932 - Section 7
- Defence of India Rules, 1962 - Rule 30
- National Security Act, 1980 - Section 3(3)
- Penal Code, 1860 (IPC) - Section 147, 332, 353, 384, 427
- Prevention of Damage to Public Property Act, 1984 - Section 3, 4
- Preventive Detention Act, 1950 - Section 3(2)

Citation: (2000) CriLJ 1683

Hon'ble Judges: V.K. Chaturvedi, J; O.P. Garg, J

Bench: Division Bench

Advocate: S.P.S. Raghav and Lal Vijai Singh, for the Appellant; Arvind Tripathi AGA and Jawahar Lal Bharti, Addl. S.C, for the Respondent

Final Decision: Dismissed

Judgement

O.P. Garg, J.

By means of this writ petition under Article 226 of the Constitution of India, the petitioner-Sanjay Singh son of Sri Kamlesh Singh alias late Kamala Singh resident of Mohalla Azad Nagar, P.S. Kherabar, district Gorakhpur, who has been detained u/s 3(3) of the National Security Act, 1980 (for short "NSA") challenges the order dated 20-6-1999 clamped by the District Magistrate, Gorakhpur-respondent No. 2.

2. Counter and rejoinder affidavit have been exchanged. Heard Sri S.P.S. Raghav, learned counsel for the petitioner, Sri Arvind Tripathi learned A.G.A. on behalf of the State of U.P. and Sri Jawahar Lal Bharti. Additional Standing Counsel on behalf of the Union of India.

3. To begin with, it may be mentioned that Sri S.P.S. Raghav, learned counsel for the petitioner has not challenged the detention of the petitioner on the ground of infraction of any procedure with regard to the approval/confirmation of the order of detention by the State Government or the delay in the disposal of the representation. The sole ground on which the order of detention is challenged, is that the detention does not have any nexus to the maintenance of ''public order''. Sri Raghav confined his submissions to the point that from the impugned order coupled with the material which has been communicated to the petitioner, even it is accepted, on its face value as correct, it would, at best, be a case of breach of ''law and order'' and not ''public order'' and, therefore, the District Magistrate was not justified in invoking the provisions of Section 3(3) of NSA. The submission has been repelled by the learned counsel for the respondents, who maintained that in the light of the facts, circumstances and background of the incident, it was a case of violation of ''public order''.

4. In view of the limited controversy raised in this writ petition, the petitioner undoubtedly would swim or sink with the finding whether in view of the facts which are to be stated presently, it was a case of breach of ''law and order'' or disturbance of ''public order''. The impugned order dated 20-6-1999 passed by the District Magistrate, Gorakhpur is Annexure 1 to the writ petition. The relevant grounds and the material are annexed with the said order. The allegations against the petitioner as are unfolded from the impugned order and the material annexed therewith are that on 17-6-1999 at about 12.30 p.m. when the District Magistrate was busy with some of his subordinate officers in the Committee Room in Collectorate Gorakhpur and other employees of the Collectorate were working in their respective offices, the petitioner along with one Jitendra Ojha and Smt. Lesh Khatoon with a body of 50-60 persons entered the Collectorate and started raising slogans against the Government and the local administration and used filthy words and unparliamentary language with a view to humiliate the officers and the employees and threatened them with dire consequences. The petitioner, it is alleged, incited and exhorted his companions to assault the officers after surrounding them and to damage the Government property so that their grievances may be ventilated and demands fulfilled.

5. The District Magistrate as well as Additional District Magistrate (City). Gorakhpur sent a missive to hear the leaders and the public accompanying them so that their problems may be solved but Sanjay Singh and Jitendra Singh again incited the crowd which became restive and the unbridled crowd entered the office to ransack and plunder the Government property due to which panic, and tension prevailed and

terror stricken Government officials ran helter-skelter with the result the Government work came to a standstill and commotion relented throughout the Collectorate compound. Excited and aggressive as the crowd was, it started pelting stones with the result Government property and records were damaged. The mob was so furious that it damaged certain articles and furniture, such as chairs and tables as well as wall-clock, door panes, typewriter. Official records were torn. In the process, Prem Shankar and Deepak Kumar were injured. On arrival of Police, the petitioner Sanjay Singh and Smt. Lesh Khatoon could be apprehended while other members of the crowd had been successful in escaping. Narendra Singh Patel, City Magistrate, Gorakhpur laid an F.I.R. against the petitioner and others, which gave rise to crime case No, 640 of 1999 under Sections 147/504/506/332/353/384 and 427, I.P.C. read with Section 3/4 Prevention of Damage (Public Property) Act, 1984, and Section 7 of the Criminal Law Amendment Act.

6. Sri Raghav pointed out that the petitioner is a young man of about 30 years of age; has never been convicted in any crime; is possessed of degree in Master of Arts; besides being a political personality; he is a member of Samajwadi party and is also a Corporator of Nagar Nigam Gorakhpur for the last three years. Being a public spirited person, it is his duty to bring the grievances of general public to the notice of the district authorities. The District administration, particularly, the District Magistrate and Police officials felt incensed on account of frequent visits of the petitioner in connection with the ventilation of grievances of the general public. It is alleged that since Gorakhpur city came under the grip of floods of Rapti river in the month of August, 1998, in which several localities of the town were marooned and inundated with flood water, causing extensive damage to the life and property of general public, the State Government allotted huge funds for providing relief to the affected persons. In spite of the fact that nearly a year had elapsed, no heed was paid by the district administration to solve the problems by giving financial assistance to the flood-victims, although representation after representations were made. On 17-6-1999, the petitioner along with the flood affected members, went to the District Magistrate, who refused to meet them and consequently, it was decided to stage a Dharna. Instead of redressing the grievance of the flood affected persons, the local Police at the behest of the District Magistrate launched an assault on the innocent persons in which some of them received serious injuries. The petitioner being a Samajwadi leader, was arrested and sent to Jail.

7. According to Sri Raghav, to feed fat the grudge, a false story was spined by the District Magistrate to illegally detain the petitioner under NSA and, in any case, the alleged acts of the petitioner cannot be said to be prejudicial to the maintenance of ''public order'' as they all relate to breach of ''law and order'' for which the petitioner has been booked appropriately under the relevant provisions of the Penal Code and other allied statutes. Sri Raghav also pointed out that the antecedents of the petitioner were quite neat and having no criminal propensities cannot be detained on the basis of alleged stray incident. According to him, a solitary incident, if at all,

can only raise a ''law and order'' problem and no more.

8. We have given thoughtful consideration to the matter. It is an indubitable legal position that an order of detention u/s 3(3) of NSA can be passed if the activities of the detenu are prejudicial to the maintenance of ''public order''. The question of difference between ''law and order'' and ''public order'' has come up for consideration many a times in judicial decisions. The distinction between the breach of ''law and order'' and disturbance of ''public order'' is one of degree and the extent of reach of the activity in question upon the society. In a leading and oft quoted case of Dr. Ram Manohar Lohia Vs. State of Bihar and Others, the Full Bench of the Supreme Court had to consider this controversy in the context of Rule 30(i)(k) of Defence of India Rules, 1962. It was observed that the ''contravention of law'' always affects ''order'' but before it could be said to affect ''public order'', it must affect the community or the public at large. There are three concepts- ''law and order''; ''public order'' and ''security of the State''. It was further observed that to appreciate the scope and extent of each of them, one should imagine three concentric circles, the largest representing ''law and order'', the next representing ''public order'' and the smallest representing ''security of State''. An act may affect ''law and order'' but not ''public order'', just as an act may affect ''public order'' but not ''security of the State''. Therefore, one must be careful in using these expressions. In another equally celebrated case, Arun Ghosh Vs. State of West Bengal, the question before the Apex Court was whether the grounds mentioned could be construed to be breach of public order and as such, the detention order could be validly made. There the appellant had molested two respectable young ladies, threatened their father''s life and assaulted two other individuals. He was detained u/s 3(2) of the Preventive Detention Act, 1950 in order to prevent him from acting prejudicially to the maintenance of public order. It: was held that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, is a question of degree and the extent of the breach of the act upon society. The test is : Does it lead to a disturbance of the even tempo and current of life of the community so as to amount to a disturbance of the public order, does it affect merely an individual without affecting the tranquility of society. The Supreme Court found in that case that however reprehensible the appellant''s conduct might be, it did not add up to the situation where it may be said that the community at large was being disturbed. Therefore, it could not be said to amount to an apprehension of breach of ''public order'', and hence, he was entitled to be released.

9. The law on this point was summarised by the Supreme Court in the case of Ram Ranjan Chatterjee Vs. The State of West Bengal, as follows :

It may be remembered that qualitatively, the acts which affect ''law and order'' are not different from the acts which affect ''public order''. Indeed, a state of peace or orderly tranquility which prevails as a result of the observance or enforcement of

internal laws and regulations by the Government, is a feature common to the concepts of ''law and order'' and ''public order''. Every kind of disorder or contravention of law affects that orderly tranquility. The distinction between the areas of ''law and order'' and ''public order'' as pointed out by this Court in Arun Ghosh v. State of West Bengal (supra) ''is one of degree and extent of the reach of the act in question on society''. It is the potentiality of the act to disturb the even tempo of the life of the community, which makes it prejudice to the maintenance of public order''. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of ''law and order'' and ''public order'' may have a common ''epicentre'' but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting ''public order'' from that concerning ''law and order''.

10. In Jaya Mala Vs. Home Secretary, Government of Jammu and Kashmir and Others, the allegations were that while the detenue was travelling by a minibus, he threatened the conductor when he demanded the bus fare and thereafter left the bus after administering threats and again after some time he and his associates took lemon water from a shopkeeper and refused to pay for the same and threatened of dire consequences. The Supreme Court held that the second incident at best discloses a threat and the offence could at best be one under Sections 504 and 506, I.P.C. and this minor infraction of law cannot be upgraded to the height of an activity prejudicial to the maintenance of public order. The Court cautioned :

"But it is equally important to bear in mind that every minor infraction of law cannot be upgraded to the height of on activity prejudicial to the maintenance of public order.... If every infraction of law having a penal sanction by itself is a ground for detention danger looms large that the normal criminal trials, and criminal Courts set up for administering justice will be substituted by detention laws often described as lawless law."

Preventive detention is anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The factors constituting the pathology of public disorder cannot be ignored. They came to be considered by the apex Court in the case of Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, .

11. A criminal act hitting a private target such as indecent assault on woman or slapping up public order. But a drunk with a drawn knife chasing a woman in a public street and woman running in panic, a Hindu or Muslim in a crowded place at a time of communal tension throwing a bomb at a personal enemy of the other religion and the people, all scared, fleeing the area striking worker armed with a dagger stabbing a blackleg during a bitter strike spreading terror these are

invasions of public order although the motivation may be against a particular private individual. The nature of the act, the circumstances of its commission, the impact on people around and such like factors constitute the pathology of public disorder. It may be a question of the degree and qualify of the activity, of the sensitivity of the situation and the psychic response of the involved people. To dissect further is to defeat the purpose of social defence which is the paramount purpose of prevention detention. The difference between the concepts of ''public order'' and ''law and order'' came up for consideration in the case of Pushkar Mukherjee and Others Vs. The State of West Bengal, . It was held that the distinction between the two is similar to the distinction between ''public'' and ''private'' crimes in the realm of jurisprudence. Quoting Dr. Allen it has been observed that public and private crimes may be distinguished in the sense that some offence primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely.

12. The aforesaid dictum of the Supreme Court came up for consideration in the case of Nagendra Nath Mondal Vs. The State of West Bengal, . The Supreme Court observed that the analogy resorted to by Justice Ramaswamy in the aforesaid case, of crimes against individuals and crime against the public, though useful to a limited extent, would not always be applicable. An assault by one individual upon another would affect law and order but a similar assault by a member of one community upon a leading individual of another community would differ in potentiality in the sense that it might cause reverberation which might affect the even tempo of the life or community. In this case, the Head Master''s room of Higher Secondary School was set to fire and registers etc., were damaged. The Supreme Court observed that the object obviously was vandalism to disturb its working by burning its records and to create a scare so that the teaching staff nor the pupils would dare attend it for prosecution of studies. It was also observed that these acts, 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, were such which caused public disorder.

13. In the case of Kishori Mohan Bera Vs. The State of West Bengal, the distinction between law and order'' and ''public order'' again was considered. The Supreme Court relied upon the law laid down in the case of Dr. Ram Manohar Lohia (supra) and observed that public order did not take in every infraction of law and that every disturbance of law and order leading to disorder would not be sufficient to invoke the extraordinary power of preventive detention.

14. The facts of the case of Shri Amiya Kumar Karmakar Vs. The State of West Bengal, were that the petitioner was detained for having entered into the toddy shop at 8 p.m. with daggers causing bleeding injuries to its owner who subsequently succumbed to his injuries in the hospital and again a day after for having killed on Azhar Ali Khan with lethal weapons. The Supreme Court held that in

the second incident there is no doubt that there was an attack resulting in the death of the victim and it would prima facie appear to be an act against specific individual involving infraction of law and order only. This act though was similar in nature and qualify to other such acts but it was not committed on account of any animus against the victim but was committed with a view to promote a particular political ideology and viewed from this angle, it was difficult to regard such an act as a mere infraction of law and order.

15. In the Samaresh Chandra Bose and Others Vs. The District Magistrate, Burdwan and Others, it has been observed by the Supreme Court that attempting to murder police personnel engaged on patrol duty in the residential township area during curfew period in order to overawe them is an act which would obviously create a feeling of panic, alarm and insecurity in the minds of local habitants in general. It may be suggestive of the fact that people will be exposed to violence at the hands of the detenu and their associates who are not even afraid of the police force. This activity was, therefore, held to be falling within the mischief of public disorder.

16. In the case of Babul Mitra Vs. State of West Bengal and Others, distinction between law and order and public order was again spelled out. It has been held that the true distinction between the areas of law and order and public order is of degree and extent of the reach of the act in question upon society. The detenu forced his entry into school, prevented the school staff with threat of violence and set fire to the school building and further attempted to throw a bomb at the police personnel at the time of his arrest. The Supreme Court relying upon the law laid down in the cases of Arun Ghosh; Nagendra Nath Mandal (supra) and Tribhuvan Nath Vs. The State of Maharashtra, held that the act of setting fire to the school building would scare the parents and guardians and deter them from sending their wards to the school. The bomb was thrown on the police personnel to cause intimidation and confusion in the minds of the police and to scare the police personnel from performing their legitimate duties of maintenance of law and order in the State. The Supreme Court held that these activities would therefore, disturb the even tempo of the life of the community.

17. An act whether amounts to a breach of law and order or a breach of public order solely depends on its extent and reach to the society. If the act is restricted to particular individual or a group of individuals it breaches the law and order problem but if the effect and reach and potentialities of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes a breach of the public order see Gulab Mehra Vs. State of U.P. and Others,

18. The point whether an act amounts to breach of ''law and order'' or ''public order'' solely depends on its extent and reach to the society. If the act is restricted to a particular individual or group of individuals , it breaches the ''law and order'' problem but if the effect of reach and potentialities of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes a

breach of the ''public order''. There are plethora of decisions on the point, which are not required to be referred to, as it would only amount to tautology and burdening this judgment unnecessarily. A reference, however may be made to a few recent decisions in which the point came to be considered with reference to the changing trends in the attitude of the criminals and their propensities. In the case of State of U.P. Vs. Kamal Kishore and Another, , apex Court found that where the incident alleged against the detenu is that he committed murder of a person in night hours, the incident is confined to individual persons and it is private crime as distinct from public crime. It does not in any way affect the even tempo of the life of the community nor does it affect the peace and tranquility of people of that particular locality where the crime has been committed. Thus the incident does not affect public order. But where the detenus are alleged to have opened fire in bus locality resulting in death of one on spot and injuring others during the day time, the incident does affect public order as its reach and impact is to disturb public tranquility and it affects the even tempo of the life of the people in the locality where the incident is alleged to have occurred. So also firing on an under-trial prisoner by the detenu in the Court premises while the under-trial prisoner was being taken to jail by the policemen would create panic and terror in the minds of persons present there and thus it affects the even tempo of the life of the community in that place . This incident certainly affects public order and not purports to disturb the even tempo of the life of the community, i.e. the people of that area. Reliance was placed on the earlier decisions in the case of Ashok Kumar Vs. Delhi Administration and Others, and Gulab Mehra Vs. State of U.P. and Others, . In Kamlabai (Smt) Vs. Commissioner of Police, Nagpur and Others, detention order was tested with reference to the fact that on 1-2-1992 at about 9.45 hours when the Police Sub-Inspector was patrolling, he saw people gathered near detenu''s stable and on seeing him they tried to run away. The S.I. caught hold of one of them who admitted that he was selling illicit liquor in the detenu''s stable and thereafter the S.I. took search of the stable and found liquor bottles. When the S.I. was about to take the arrested person and the liquor bottles, the detenu and his associates came there, questioned the S.I. and forcefully broke the liquor bottles on the spot. When the S.I. told them that he was performing this duty, the detenu threatened him that they will finish him if he does not act according to their wishes. So saying the detenu caught hold of the S.I. and surrounded him. The S.I. however, got released and went to the police station. This act and conduct of the detenu was considered to be nothing but display of goondasim, by the detaining authority. The apex Court took the view that the above was not a stray act affecting law and order. Catching hold of Sub Inspector and threatening him in a public place like that naturally would have created panic in the locality. It could not be said mat the ground had no nexus to the public order.

19. In another recent decision of the Apex Court in Smt. Tarannum Vs. Union of India and Others, a reference was made to its earlier decision in Angoori Devi for

Ram Ratan Vs. Union of India (UOI) and Others, in which the apex Curt had the occasion to consider the fine distinguishing feature between ''public order'' and ''law and order''. It observed as follows :

The impact of ''public order'' and ''law and order'' depends upon the nature of the act, the place where it is committed and motive force behind it. If the act is confined to an individual without directly or indirectly affecting the tempo of the life of the community, it may be a matter of law and order only. But where the gravity of the act is otherwise and likely to endanger the public tranquility, it may fall within the orbit of the public order. This is precisely the distinguishing feature between the two concepts.

20. Sometimes, as observed in Ayya alias Ayub Vs. State of U.P. and Another, what might be an otherwise simple ''law and order'' situation might assume the gravity and mischief of a ''public order'' problem by reason alone of the manner or circumstances in which or the place at which it is carried out. Necessarily, much depends upon the nature of the act, the place where it is committed and the sinister significance attached to it.

21. Placing reliance on the following observations in Mrs. Harpreet Kaur Harvinder Singh Bedi Vs. State of Maharashtra and another,

Crime is a revolt against the whole society and an attack on the civilisation of the day. Order is the basic need of any organised civilised society and any attempt to disturb that order affects the society and the community. The distinction between breach of law and order'' and disturbance of ''public order'' is one of degree and the extent of reach of the activity in question upon the society. In their essential quality, the activities which affect ''law and order'' and those which disturb ''public order'' may not be different but in their potentiality and effect upon even tempo of the society and public tranquility there is a vast difference. In each case, therefore, the Courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of ''public order'' or only ''law and order''.

It was observed in Tarannum Case (supra) that objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of ''public order'' and are not merely prejudicial to the maintenance of "law and order''.

22. To sum up the distinction between breaches of ''law and order'' and the disturbance of ''public order'' is to be made on the basis of the following principles :

1. A contravention of law always affects order, but before it can be said to affect public order, it must affect the community or public at large.

2. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality.

3. It is the degree of disturbance and its effect upon the life of the community in general or in particular locality which determines whether the disturbance amounts only to breach of law and order of a disturbance of public order.

4. It is 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.

5. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from wide spectrum of the public, it would raise a problem of law and order only.

23. Learned counsel for the petitioner placed emphatic reliance on the decision of three Judges Bench of apex Court in Mrs. T. Devaki Vs. Government of Tamil Nadu and others, to support his contention that the present is a case of breach of ''law and order'' and not of public order. The facts of that case are starting. The sole ground for the order was that while a seminar was going on in a hall in which a Minister as well as the District Magistrate were participating the detenu incited his men saying "Finish the Minister''s Chapter today" and after saying that he threw a dagger aiming at the Minister but the dagger missed the target and fell down on the stage. Thereafter the detenu took out a bottle containing petrol and a match box out of a hand bag which he carried in his hand. Meanwhile, the SubInspector of police, caught hold of the detenu, seized the bottle and the matchbox. It is further stated that the detenu and those who accompanied him attempted to attack the Minister with knives in their hands but they were overpowered by the police and the members of public. As a result of the incident those present in the hall panicked and got scared and run helter skelter, causing obstruction to traffic on a nearby road. It was alleged that the attempted murderous assault on the Minister created scare and a feeling of insecurity in the minds of the persons present in the hall and the detenu''s action interrupted the "proceedings" of the seminar for a while. The apex Court held that the solitary incident as alleged in the ground of detention was not relevant for sustaining the order of detention for the purpose of preventing the detenu from acting in a manner prejudicial to the maintenance of public order. Accordingly, the detenu was directed to be released as detention was found to be illegal.

24. It is true that the law laid down by three Judges Bench of apex Court has to prevail over the anterior or posterior two Judges Bench decisions, but this fact cannot be lost sight of that the same act in a given setting may appertain to law and order while in a changed setting may be in the realm of public order. The dare devil way in which the acts were committed, the setting in which the incidents took place, the reaction that followed from these activities, and the repercussion thereof on the locality have to be taken into consideration to determine if the activities fall within

the mischief of public disorder. To ascertain whether the order of detention is valid or is liable to be vacated, it is not advisable to blindly follow the guidelines in a different case. The problem arising in each case must be considered on its own facts and in the proper setting. To import the ratio of a case vitally connected with facts thereof is bound to have misleading results. Mrs. T. Devaki''s case (supra) is distinguishable on more than one grounds and as would be shown presently, cannot be treated as an authority to be applicable squarely to the facts of the present case. In that case the detenu has a positive pique or animosity with the Minister concerned on whom an assault was made1 due to political rivalry, the attack was pointedly directed on the Minister whose indifference and callous attitude had incensed the detenu; the detaining authority, i.e. the District Magistrate, who was present on the dais and was in the closest possible proximity to the Minister was not prepared to corroborate the incident on his personal knowledge and instead he relied upon the reports of the subordinates. The District Magistrate had not only pleaded ignorance about the actual happening by deposing that though he was present on the dais, he could not witness the incident as he was concentrating on the proceedings of the seminar and preparing reply to the queries raised by the Speakers at the Seminar. The apex Court deprecated the conduct and attitude of the District Magistrate and had come to the conclusion that it was a case where the detaining authority has failed to apply his mind. Since the authoritative pronouncement of the three Judges Bench of the Apex Court is sought to be distinguished, it would be proper to quote the following observations made by the apex Court, which vacated the detention order.

Since the District Magistrate was present on the dais along with the Minister and the alleged murderous assault is allegedly to have been made by the detenu in the presence of the detaining authority, one would expect him to have witnessed the occurrence himself. But it is interesting to note that in paragraph 23 of his affidavit, the District Magistrate has stated that though he was present on the dais but did not witness the incident as he was concentrating on the proceedings of the Seminar and preparing replies to the queries raised by Speaker at the seminar. It is difficult to believe the District Magistrate that he could not see the occurrence although he was seated on the dais along with the Minister, on whom murderous assault was allegedly made by the detenu. He is not ready to corrobrate the occurrence as presented to him by the sponsoring authority, namely, the Police. If the detaining authority, was himself present and was an eye witness to the occurrence on the basis of which detention order was made it was imperative for the detaining authority to have honestly and bona fide formed the requisite opinion in making the order of detention on the basis of his own knowledge and perception instead of relying more on the version of the incident as placed before him by the sponsoring authority. In a case where the the detaining authority may not be present at the place of the incident or the occurrence, he has to form the requisite opinion on the basis of materials placed before him by the sponsoring authority but where the

detaining authority was himself present at the scene of occurrence he should have relied more on his own observation and knowledge than on the report of the sponsoring authority. In the instant case, the detaining authority though present at the scene of occurrence does not support the incident as presented to him by the sponsoring authority. In the circumstances, we are of the opinion that there was non-application of mind by the detaining authority in making the impugned order of detention.

25. Now it is the time to consider the detention order in the instant case with reference to the facts as have been disclosed in the grounds of the detention order supplied to the petitioner. As said above the petitioner along with a body of 50-60 persons had entered the Collectorate in the busy hours at about 12.30 noon. At that time the Collector of the district was holding a meeting in the Committee Room with the concerned officers. The employees of the Collectorate were present in their respective offices. The crowd initially raised slogans decrying the Government and the local administration by using slangs and filthy language. Obviously, the meeting was disturbed. The District Magistrate as well as the Additional District Magistrate sent a message that the grievance of the members of the crowd would be looked into and solved. This message did not evoke any favourable response from the crowd and instead on the incitement and provocation on the part of the petitioner, the crowd got excited and unmanageable. They entered the various offices and not only assaulted the persons who had come to Collectorate but also ransacked and plundered the Government property. They torn the public records and damaged chairs-tables, wall clock, typewriter etc. They smashed the glass panes. For some time, a total chaos and disorder prevailed in the Collectorate. The site-plan which is annexed with the various documents on record, indicates that the office of the Senior Superintendent of Police is also located adjoining to the Collectorate in the same campus. Obvioulsy, panic and insecurity in the minds of the employees, officers, and the public who had come to the Collectorate, prevailed. They must have been scared on account of intimidation held out and the confusion generated by the crowd, of which the petitioner detenu was leader. It was not a case of minor infraction of law. At the district level, the District Magistrate and the Senior Supteintendent of Police are the highest functionaries of administration. They are representatives of the State Government. Violent incident has serious, wide spread repercussion and ramification in the mind of general public. It was suggestive of the fact that if the senior administrative officers are exposed to violence, humiliation and vandalism then no person in the district was safe. This message must have given a wrong signal to the public, in general officers/official, executive and police force as well as residents of the locality , in particular. The cumulative effect of the entire incident was that it had positively disturbed the even tempo of life of the community. In the similar circumstances, recently, a Division Bench of this Court has held on 30-7-1999 in Habeas Corpus Writ No. 26889 of 1999 (Reported in 1999 (25) ACR 1675) Prem Chand Sharma v. Superintendent District Jail, Moradabad that the

activity complained of must have left an impact of fear and terror on all the officers and employees present when the Collector Dehradun was holding a meeting . In that case, the petitioner Prem Chand Sharma along with a body of 50-60 lawyers had created a scene when District Magistrate Dehradun was in a meeting with district officers; filthy and insulting slogans were raised and the crowd forcibly entered the office of the District Magistrate broke the telephone and glasses of windows and doors, tables and chairs and also broke the glass affixed on the table of the District Magistrate. Sri Raghav, learned counsel for the petitioner made an, attempt in vain to distinguish the aforesaid decision on the ground that the detenu and other persons accompanying him were the lawyers while in the present case detenu is a common man. This distinction is without difference and is nothing but an attempt to resort to hair splitting. There is much in common in the illegal acts committed by the detenu in the earlier writ petition as well as by the detenu in the present case.

26. An attempt was made by Sri Raghav to assail the facts, which have given rise to detention of the petitioner. In substance his plea was that the petitioner along with aggrieved persons had gone to the Collectorate with a view to ventilate their grievances. Due relief was not being extended to the flood affected persons in spite of the fact that long one year had already elapsed. If was also urged that the various acts were not sufficient for forming a subjective opinion by the District Magistrate that the maintenance of public order has been disturbed. This submission is not well merited and has been stated simply to be rejected. This Court exercising extraordinary jurisdiction does not set in appeal over a detention order passed by a detaining authority. The Court has limited jurisdiction in the matter and as has been held by the apex Court in Kanuji S. Zala Vs. State of Gujarat and Others, what is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well-settled that whether the material was sufficient or not is not for the Courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. In Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another, it was observed that it is well settled that subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. The same point came to be considered in Alijan Mian Vs. District Magistrate, Dhanbad and Others, in which it was observed that it was for the detaining authority to have the subjective satisfaction whether in the particular set of facts, there are sufficient materials to place a person under preventive detention in order to prevent him from acting in a mariner prejudicial to "public

order'' or the like in future. A reference may also be made to some decisions of this Court in the cases Anil Kumar Singh v. State of U.P. 1985 CriLJ 1648 Ghanshyam Bhagat v. State of U.P. 1986 AllLJ 313 Rajiv Sharma v. State of U.P. 1986 AllLJ 415 : Gur Bax Singh Bakshi v. State of 1986 AllLJ 542 (Lucknow Bench), Surya Prakash Sharma v. State of U.P. 1995 AllLJ 777. In the instant case, the detenu has been detained on the basis of personal knowledge of the detaining authority in whose presence the entire incident had taken place, as well as the statement of the officers present there. The District Magistrate has himself observed and noticed the damaged property and the injured persons, and has heard the filthy language and slogans which were being hurled by the petitioner and other members of the crowd.

27. A short and swift reference may be made to the submission of Sri Raghav that it was merely a solitary act of the petitioner and on the basis of solitary incident he should not be detained. This submission is merit-less. The legal position on the point is well settled that an order of detention can be passed on the basis of one solitary act. Whether a single act is sufficient or not depends on the gravity and the nature of the act having regard to the fact whether the act is organised act or a manifestation of organised act. At this juncture, a reference may profitably be made to the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, wherein the apex court ruled that it is beyond dispute that the order of detention can be passed on the basis of a single act. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activities. It cannot be said as a principle that one single act cannot be constituted the basis for detention. Thus, the argument of learned counsel for the petitioner that since it is solitary incident of the petitioner, he deserves sympathy, is rejected.

28. In the conspectus of the facts stated above, we come to the conclusion that the activities of the petitioner as well as group of persons, whom he was leading were highly prejudicial and detrimental to the maintenance of public order and the District Magistrate Gorakhpur was, therefore justified in passing the detention order. It does not suffer from any illegality or irregularity calling for interference under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.