(2004) 08 AP CK 0007

Andhra Pradesh High Court

Case No: Writ Petition No. 8627 of 2004

K. Amarnath	APPELLANT
Vs	
The Collector and District Magistrate R.R. Dist., The Chief Secretary Government of AP and The Superintendent Central Jail for Women	RESPONDENT

Date of Decision: Aug. 3, 2004

Acts Referred:

- Andhra Pradesh Excise Act, 1968 - Section 3(1)
- Andhra Pradesh of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 - Section 2(i), 3
- Constitution of India, 1950 - Article 22(5)
- Immoral Traffic (Prevention) Act, 1956 - Section 3, 4
- Preventive Detention Act, 1950 - Section 3
- Registration Act, 1908 - Section 17

Citation: (2004) 2 ALD(Cri) 531 : (2004) 6 ALT 54 : (2005) CriLJ 843

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: C. Srinivasa Reddy, for the Appellant; P. Lakshma Reddy, for 1st Respondent and M.A. Bari, for 2nd Respondent, for the Respondent

Judgement

1. This is an application filed u/s 151 CPC to modify the order passed by this Court in Appl. No. 716 of 2002. Through the order passed in Appl.No. 760 of 2002, this Court directed the District Court, Rangareddy, to deliver possession of Ac. 5.02 guntas of land in S.No. 77 of Hafeezpet village, Serilingampalli Mandal, Rangareddy District to the petitioners. Through the present application, the petitioners seek modification of the same

to the effect that the possession be delivered to them through the Receiver/ Commissioner, the second respondent herein, instead of the District Judge, Rangareddy.

2. Heard the learned Counsel for the petitioner and receiver/commissioner.

3. The petitioners claim to be purchasers of Ac. 5.02 guntas of land in Survey No. 77 of Hafeezpet village, Sherilingampally Mandal, Rangareddy District from Smt. Zaheerunnisa Begum, W/o. Mohammad khan, defendant No. 94 in C.S. No. 14 of 1958 on the file of this Court. They filed Appl. No. 759 of 2002, under Order 22 Rule 10 r/w Section 251 CPC, for impleading them as party defendants to CS No. 14 of 1958, and interlocutory proceedings therein, Appl. No. 760 of 2002 was also filed under the same provision namely, Order 22 Rule 10 r/w section 151 CPC, seeking a direction for delivery of possession of Ac. 5.02 guntas of land in Sy. No. 77 referred to above, by issuing a warrant of possession, in favour of the petitioners, through the District Judge, Rangareddy District, appl. No. 756 was filed u/s 151 of C.P.C. for a direction to the District Collector, Rangareddy District, Revenue Divisional Officer concerned and the Mandal Revenue Officer, Serilingampalli, to mutate the shares of assigners in respect of the said land in favour of the petitioners. One more application, being Appl. No. 762/02 was filed under Order 22 Rule 10 CPC to recognize the assignment of the said land in their favour, by the respondent therein. Through a common order dated 12-07-2002, this Court ordered the applications as under:

"Learned counsel for the respondent has no objection. He also submits that similar orders were passed by this Court and they were confirmed by the Supreme Court. Under these circumstances, all the applications are ordered."

4. Now, the petitioners seek modification of the order passed in Appl. No. 760 of 2002 to the effect that the delivery of possession be undertaken by the Receiver/Commissioner instead of the District Judge, Rangareddy. District.

5. It is not in dispute that C.S. No. 14 of 1958 is filed for the relief of partition and separate possession of the suit schedule properties. A preliminary decree was passed way back in the year 1963. The shares of all the parties, including defendant No. 94 were ascertained. So far as the allotment of properties, be it, movable or immovable, in favour of the respective parties are concerned, no final decree has been passed as yet. The question of an individual sharer becoming conferred with absolute rights in any portion of the suit schedule property in a suit for partition, would arise, if only the final decree is passed and the possession of the property allotted to his or her share is delivered. The final decree has to be engrossed on a stamp of requisite value. It is ununderstandable as to how the petitioners or for that matter their vendor Jahirunnisa Begum had acquired absolute rights vis-a-vis the property. At the most, the petitioners can step into the shoes of the first respondent on the basis of assignment or transfer of the property in their favour. Even in such a case, they have to approach this Court for passing of a final decree in accordance with law. The delivery of possession can be prayed for only if the preliminary or final decree provides for it.

6. This question fell for consideration before a Division Bench of this Court, in relation to an order passed in C.S. No. 14 of 1958 itself. In the compromise decree, that was passed in the suit, item No. 30 of the IV Schedule was allotted to the share of defendants 51 and 52, with the consent of the parties. In fact, defendants 51 and 52 were declared as the exclusive owners of that item, under a clause in the compromise decree. One Kalavaty filed E.P. No. 1 of 2001 in this Civil Suit for delivery of a portion of item No. 30, on the basis of a sale deed, dated 12-06-1967, said to have been executed by defendants 51 and 52. Through an order dated 09-04-2002, a learned single Judge, ordered the E.P., and enabled the applicants therein to recover possession, if necessary by police aid. One T. Saraswathi Prasad Singh, filed O.S.A. No. 29 of 2002, challenging the order passed in the E.P. He pleaded that he purchased the very property through sale deeds, dated 02-02-1962. He contended that the E.P., was not maintainable, since there was no final decree and there was no direction in the preliminary decree for delivery of possession. In the judgment reported in 2003 (2) ALD 39, a Division Bench of this Court held as under:

Further, the terms of compromise would disclose that D-51 and D-52 shall be exclusive owners and there is no direction that they are entitled to the delivery of possession. Since there is no direction in the decree for delivery of possession, the purchaser from D-51 and D-52 cannot seek for delivery of possession by way of execution. The remedy of G.V. Kalavaty is to file a suit for declaration of title and for delivery of possession, if so advised. Unless, there is a decree for delivery of possession, the execution petition is not maintainable. The argument of the Advocate for the 1st respondent that these matters can be decided in the execution proceedings and all the objections can be decided under Order XXI Rules 97 to 101 C.P.C. only when there is decree for delivery of possession."

7. Apart from maintainability, the Division Bench considered the matter on merits also. It was held that even where an E.P., was maintainable, and there is a direction as to delivery of possession in the High Court, the executing Court, has to adjudicate all the questions involved, and only thereafter, direct delivery of possession. The relevant portion reads as under:

"Without deciding the right and title to the disputed property, the delivery of possession ought not to have been ordered. For the above said reasons, we are of the opinion that the decree in question is not executable in so far as the E.P. schedule property is concerned and the 1st respondent Smt. G.V. Kalavathy is not entitled for the execution of decree and for delivery of possession of E.P. schedule property and the learned Single Judge committed error in passing order for delivery of the properties in so far as E.P. schedule mulgies are concerned and therefore the said order is liable to the set aside."

8. When this is the view taken, in relation to an execution proceedings, the question of the applicant being permitted to recover possession by filing an application u/s 151 C.P.C., does not arise. It is rather strange and agonizing that such applications are found in plenty in C.S. No. 14 of 1958; and astonishingly many of them were ordered. The suit was transformed into a live-fountain, for the purpose of securing such orders, in relation

to valuable properties. The tenor of the applications, in fact, does not fit, even in to administration, or scheme suits. Recognition of assignments, in respect of vast extents of urban properties, was sought without verification, as to the scope and nature of the decree, stage of the suit, nature of assignment, compliance with Section 17 of the Registration Act etc., The applicant herein and several others have in fact, procured orders for delivery of possession, even before a final decree was passed. The lands form part of a schedule, wherein the properties described with reference to the village, without mentioning the extent, much less, survey numbers. Assistance of this Court was taken to recover possession, which was otherwise impermissible for them, in law. They derived greater benefit out of such orders, than what they could have got through suits for declaration of title and recovery of possession. This Court is compelled to observe that the process of the Court was grossly misused.

9. The petitioners sought relief only against the first respondent. On behalf of the first respondent, it was stated, that she has no objection for the applications to be allowed. If that were to be so, they are ought not to have been any difficulty for the petitioners on the one hand and the first respondent on the other, to work out the affairs between them. It is not known as to how and why the assistance of the District Judge, Rangareddy Court was sought. The parties have not appraised this Court of these factual and legal aspects, properly.

10. Whatever may have been the circumstances under which the order dated 12-07-2002 came to be passed, the petitioners cannot be granted any relief as prayed for, in the present application. A receiver was appointed by this Court to undertake a limited exercise of identifying certain suit schedule properties. Strictly speaking, even such a course is impermissible in a suit for partition. The question of appointment of a receiver would arise only for the purpose of undertaking division of the properties, which are included in the schedule. It is rather surprising and strange that the suit schedule comprises of villages together without mentioning either the extent, much less the survey numbers. If the parties have chosen to seek partition of such properties, it is not the duty of the Court to undertake an exercise to ascertain the extent, location or survey numbers of such properties, much less to recover possession of the same from 3rd parties. Such an exercise is wholly outside the scope of any suit for partition. Be that as it may, this Court did not entrust the custody of agricultural lands to the receiver. Even according to the pleadings and the preliminary decree, agricultural lands of about 20,000 acres in the villages referred to in the schedule were not in possession of any parties to the suit. Even in a case where the receiver is entrusted with the custody of a definite property, in contemplation of passing of a final decree, necessary directions need to be issued to the receiver to deliver the corresponding items of property to the respective sharers as a sequel to the final decree. As observed earlier, the final decree has not yet been passed in this suit, nor the receiver was entrusted with the custody of any identified extent of agricultural land.

11. For the foregoing reasons, the application filed by the petitioners is totally misconceived and the same is dismissed. No costs.

12. Having regard to the divergence of the views taken by the two learned Judges constituting the Bench, the matter has been referred to me for the opinion of the 3rd Judge. I have had the advantage of going through the orders of both the learned Judges. The facts and the rival contentions of the writ petitioner and the State have been narrated in extenso therein and, therefore, it is not necessary to reiterate the same.

13. The writ of Habeas Corpus was sought by the son of the detenue. The detention order in this case was passed by the learned District Collector on 20.01.2004 in Proc. No. C1/421/2004 under sub-section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act 1 of 1986). The quintessence of the impugned order is that the detenue-Smt. Kodi Saroja is an immoral traffic offender having been arrested in Crime No. 935/2003 under Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 (for short "the Act, 1956) and has been indulging in prejudicial activities as defined in clause (i) of Section 2 of the Act 1 of 1986 and, therefore, recourse to normal legal procedure would involve more time and would not be an effective deterrent to prevent her from indulging in such prejudicial activities further and with a view to prevent her from acting in any manner prejudicial to the maintenance of public order, the provisions of the Act 1 of 1986 should be invoked to detain her, the District Collector having been satisfied about the same directed the detention of the said Saroja in Central Prison, Chanchalaguda. The grounds in support thereof have been annexed to the order of detention along with the list of documents, which buttress the same. Pursuant to the impugned proceedings of the Collector, the Government of A.P. issued G.O. Rt. No. 452 dated 28.01.2004 according the necessary approval to the order of detention passed by the Collector. The matter had been referred to an Advisory Board and pursuant to the report dated 04.03.2004 given by the Board, the Government of A.P. vide G.O. Rt. No. 1240 dated 15.03.2004 confirmed the order of detention and directed the detention to be continued for a maximum period of 12 months from the date of detention.

14. The writ petitioner is now assailing the said proceedings on the premises that (i) they do not relate to public order and at the most they may affect law and order; (ii) the incidents relied upon by the detaining authority to buttress its order of detention are stale and are not proximate to the order of detention; (iii) the fact that the detenue was released on bail in all the cases was omitted to be mentioned in the grounds; and (iv) finally the detenue has not been prosecuted under the provisions of the Immoral Traffic in Women and Girls Act, 1956 in any of the cases and, therefore, such an order is vitiated having been passed on irrelevant and non-existent grounds.

15. At the outset, it is expedient to understand certain of the provisions contained in Act 1 of 1986. The expressions, "acting in any manner prejudicial to the maintenance of public

order" and "immoral traffic offender" are defined under clauses (a) and (i) of Section 2 thereof respectively, which read as under:

Section 2(a):

" "acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging , in any of his activities as such, which affect adversely, or are like to affect adversely, the maintenance of public order.

Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

Section 2(i):

" "immoral traffic offender" means a person who commits or abets the commission of any offence under the Immoral Traffic in Women and Girls Act, 1956;"

16. It is obvious from a combined reading of the above provisions that if an immoral traffic offender engages himself or herself or is making or makes preparation for engaging in any of the activities which affect adversely or are likely to affect adversely the maintenance of public order, it can be said that he or she is acting in any manner prejudicial to the maintenance of public order. Such acts will affect the maintenance of public order only when they directly or indirectly cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave and widespread danger to life or public health. An isolated act of indulging in any immoral traffic offences by an immoral traffic offender may affect the law and order situation. To say that it affects the public order, the immoral traffic offender must indulge in such acts which are the offences under the Immoral Traffic in Women and Girls Act, 1956 and which may directly or indirectly cause any harm, danger or alarm or a feeling of insecurity among the general public or a section thereof; or which may cause a grave and widespread danger to life and public health. Then only it is said that the person who is alleged to have indulged in such immoral traffic offences is acting in any manner prejudicial to the maintenance of public order. Unless the detaining authority is satisfied that the immoral traffic offender is acting in any manner prejudicial to the maintenance of public order, it cannot invoke the provisions of Section 3 of the Act 1 of 1986 ordering the detention of such persons. The twin requirements, which appear to be sine qua non, therefore, are that the detenue must be an immoral traffic offender; and that he or she must act in any manner prejudicial to the maintenance of public order. The public order would be affected only when the activities of the offender may directly or indirectly cause

any harm, danger or alarm or a feeling of insecurity among the general public or a section thereof or may cause grave and widespread danger to life or public health. In other words, the acts of detenue may cause a feeling of insecurity among the general public or may cause grave and widespread danger to life or public health. It must be said that if a person indulges and trades in sex, such acts would gravely affect the public health as it may lead to the dangerous epidemic of AIDS. Perhaps that may strike to the commonsense of any prudent person. But what is required is the necessary satisfaction of the authority which is inclined to pass a detention order, the significance whereof need not be overemphasized having regard to the constitutional mandate that life and liberty of the individual are the fundamental rights and human rights and shall have to be preserved at any cost.

17. Section 3 of the Act 1 of 1986 clearly empowers the Government to make an order validly to detain an immoral traffic offender with a view to preventing him/her from acting in any manner prejudicial to the maintenance of public order on being satisfied that it is expedient to do so.

18. The crucial point which is germane in the context for consideration is whether or not the authority which passed the impugned detention order has reached the necessary satisfaction that the immoral traffic offender has been acting in any manner prejudicial to the maintenance of public order.

19. Whether an act relates to ''law and order'' or ''public order'' depends upon the effect of the act on the life of the community or in other words the reach, 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 the public order. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. There are three concepts, viz. ''law and order'', ''public order'' and ''security of the State''. To appreciate the scope and extent of each of them one should imagine three concentric circles. The largest of them represented ''law and order'', next represented ''public order'' and the smallest represented ''the security of the State''. An act might affect ''law and order'', but not ''public order'' just as an act might affect ''public order'' but not ''the security of the State''. Vide Dr. Ram Manohar Lohia Vs. State of Bihar and Others, ; Arun Ghosh Vs. State of West Bengal, ; Pushkar Mukherjee and Others Vs. The State of West Bengal, ; Ashok Kumar Vs. Delhi Administration and Others, ; State of U.P. Vs. Kamal Kishore and Another, . The concept of law and order, public order and security of the state do not require any further elucidation having regard to the plethora of decisions rendered by the Apex Court.

20. In my considered view, it is not expedient to consider the essential difference between ''law and order'' and ''public order'' as enunciated by the Apex Court in as much as Act 1 of 1986 specifically envisages that the activities must be of such a nature which may cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave and widespread danger to life and public health so as to

ultimately conclude that the person who is indulging in such activities is acting prejudicial to the maintenance of public order. It is apposite here to consider the judgment of the Apex Court in Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Others, . In para 5 it was held thus:

"Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not. In Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, it has been held by this Court that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order" ".

21. There can be no gainsaying that running a brothel house is a greater evil which prejudicially affect the interests of the society or a portion thereof. The act of an individual who gets attracted to the brothel house cannot be viewed in isolation as an individual act de hors its ramifications on the fabric of the society or a part thereof. The family life of the individual not only gets affected nay the society suffers eventually since it certainly has insidious affect on the public health. A clear public policy is discernable in having enacted the Act, 1956 so as to eradicate such social evil. The view expressed by a Division Bench of this Court in Boya Chinna Subbarayudu Vs. The Collector and District Magistrate, Kurnool and Others, may profitably be excerpted hereunder in para 6 thus:

"It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the orders made under the that Act cannot be detained u/s 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot-legger sells illicit distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health."

[Emphasis is mine]

22. Nonetheless, it shall be the subjective satisfaction of the authority, which passes the detention order affecting the life and liberty of an individual on objective considerations. A reconnaissance of the precedential jurisprudence on the point is expedient and would help understanding the areas which are entrusted to the Judiciary and Executive to act

and the limitations engrafted on those functionaries in the realm of preventive detention law.

23. In Bhim Sen For R.S. Malik Mathra Das and Others Vs. The State of Punjab, a three Judge Bench of the Apex Court held at pages 23 and 24 thus:

"An order of detention to prevent black-marketing cannot be held to be illegal merely because in the grounds for such detention the detaining authority has referred only to the past activities of the person detained, inasmuch as instances of past activities may give rise to a subjective mental conviction that it is necessary to detain such person to prevent him from indulging in black-marketing in the future.

Under the Preventive Detention Act, 1950, the test as to whether an order of detention should be made is the subjective satisfaction of the detaining authority; the Court has no power to consider whether the grounds supplied by the authority are sufficient to give rise to such satisfaction. The establishment of the Advisory Board by the Amending Act of 1951 has not made the matter a justiciable one, and even after the Amending Act the Court has no power to consider whether the grounds supplied are sufficient for making an order of detention."

[Emphasis is mine]

24. In Sodhi Shamsher Singh and Others Vs. The State of Pepsu and Others, yet another three Judge Bench of the Apex Court held in para 4 thus:

"The propriety or reasonableness of the satisfaction of the Central or the State Government upon which an order for detention under S.3, Preventive Detention Act is based, cannot be raised in this court and we cannot be invited to undertake an investigation into sufficiency of the matters upon which such satisfaction purports to be grounded. We can, however, examine the grounds disclosed by the Government to see if they are relevant to the object which the legislation has in view, namely, the prevention of objects prejudicial to the defence of India or to the security of State and maintenance of law and order therein."

[Emphasis is mine]

25. On facts, that was a case where the detenus were said to have published and distributed pamphlets containing filthy and abusive language and assailing the character and integrity of the Chief Justice of Pepsu attributing gross partiality and communal bias in the matter of recruiting officers to judicial posts and also in deciding cases between the litigants. Under the circumstances, it was held that publication or distribution of those pamphlets could not have any rational connection with the maintenance of law and order in the State or prevention of acts leading to disorder or disturbance of public tranquility.

26. In RAMESHWAR LAL V. STATE OF BIHAR AIR 1968 SC 1803 in para 7 the Apex Court held thus:

"The formation of the opinion about detention rests with the Government or the officer authorized. Their satisfaction is all that the law speaks of and the courts are not constituted an appellate authority. Thus the sufficiency of the grounds cannot be agitated before the court. However, the detention of a person without a trial, merely on the subjective satisfaction of an authority however high, is a serious matter. It must require the closest scrutiny of the material on which the decision is formed leaving no room for errors or at least avoidable errors. The very reason that the courts do not consider the reasonableness of the opinion formed or the sufficiency of the material on which it is based, indicates the need for the greatest circumspection on the part of those who wield this power over others. Since the detenu is not placed before a Magistrate and has only a right of being supplied the grounds of detention with a view to his making a representation to the Advisory Board, the grounds must not be vague or indefinite and must afford a real opportunity to make a representation against the detention. Similarly, if a vital ground is shown to be non-existing so that it could not have and ought not to have played a part in the material for consideration, the Court may attach some importance to this fact."

[Emphasis is mine]

27. In the process, the Apex Court relied upon a Judgment of the Federal Court in Keshav Talpade V. King Emperor, AIR 1943 FC 72 wherein it was observed thus:

"..... The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

28. In Bhut Nath Mete Vs. The State of West Bengal, in para 14 the Apex Court held thus:

"The District Magistrate should be bona fide satisfied about the prejudicial activities of the detainee. Absence of bona fides in this context does not mean proof of malice, for an order can be mala fide although the officer is innocent. The important point is that the satisfaction of the public functionary, so subjective, must be real and rational, not colourable, fanciful, mechanical or unrelated to the objects enumerated in Section 3(1) of the Act."

[Emphasis is mine]

29. In Samir Chatterjee Vs. State of West Bengal, in para 7 Apex Court held thus:

"The detaining authority when he comes to know that the petitioner was going to be discharged from the criminal cases for want of sufficient evidence for successful prosecution can very well take the view that it was necessary for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order that he should be detained and if he is satisfied on the evidence available his subjective satisfaction cannot be questioned by this Court."

30. The Apex Court in this case considered two incidents as having the effect of affecting the public order. In the first incident, the detenu and his associates as well as 25 others assembled and formed a violent mob outside the walls of the workshop and continued to pelt brickbats for over two hours. That incident very clearly took place in a public place. Having regard to the fact that the members of the public passing to and for and this incident would have caused fear and alarm not merely to the persons working in the factory but also to people passing along the road, the Court held that it affects the public order. Similarly in the second incident the detenu and others were armed with pistol and bombs, exploded the bombs with a view to terrorising the local people as well as the workers and widespread panic and confusion was created in the above area. That too was considered as having the affect on the public order.

31. In Khudiram Das Vs. The State of West Bengal and Others, a four Judge Bench of the Apex Court held in para 8 thus:

"The matters which have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i), (ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is, therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority, for what is made a condition precedent to the exercise of the power of detention is not an objective determination of the necessity of detention for a specified purpose but the subjective opinion of the detaining authority, and if a subjective opinion is formed by the detaining authority as regards the necessity of detention for a specified purpose, the

condition of exercise of the power of detention would be fulfilled. This would clearly show that the power of detention is not a quasi-judicial power."

32. In para 9, the Apex Court further held thus:

"But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of "improper purpose", that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the Commissioner of Police did in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour and National Service (1946) 2 All ER 201 the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by se If-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded "on materials which are of rationally probative value". The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad."

[Emphasis is mine]

33. In Ram Bali Rajbhar Vs. The State of West Bengal and Others, in para 13 the Apex Court held thus:

"On a habeas corpus petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a satisfaction on every question of fact. Courts have, no doubt, to zealously guard the personal liberty of the citizen and to ensure that the case of a detenu is justly and impartially considered and dealt with by the detaining authorities and the Advisory Board. But, this does not mean that they have to or can rightly and properly assume either the duties cast upon the detaining authorities and Advisory Boards by the law of preventive detention or function as courts of Appeal on questions of fact."

In para 4, the Apex Court held thus:

"Court must be careful in substituting its own opinion about what is enough for the subjective satisfaction of the detaining authorities with which interference could be justified only if it is clear that no reasonable person could possibly be satisfied about the need to detain on the grounds given in which case the detention would be in excess of the power to detain. The required satisfaction must have reference to a need to prevent what is anticipated from the detenu. The past conduct or activity is only relevant in so far as it furnishes reasonable grounds for an apprehension. Prevention and punishment have some common ultimate aims but their immediate objectives and modes of action are distinguishable."

[Emphasis is mine]

34. In Sk. Serajul Vs. State of West Bengal, a four Judge Bench of the Apex Court was of the view having regard to the facts that the detention order was made on 24.08.1972 and the subjective satisfaction of the authority was founded on three incidents of breaking open railway wagons and looting on 21.11.1971; 24.11.1971 and 15.01.1972 and that though the last incident occurred on 15.01.1972, the order of detention was not made until 24.08.1972 and even after the order of detention was made, the petitioner was not arrested until 22.02.1973 and thus there was a delay at both stages and that the delay was not satisfactorily explained and, therefore, that would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate.

35. In Ashadevi Mehta (Detenu) Vs. K. Shivraj, Addl. Chief Secretary to the Govt. of Gujarat and Another, the Apex Court held in para 6 thus:

"It is well-settled that the 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."

36. The Apex Court considered its former Judgment in Sk. Nizamuddin Vs. State of West Bengal, and Suresh Mahato Vs. The District Magistrate, Burdwan and Others, . After having thus considered those two Judgments, it was held finally thus:

"The principle that could be clearly deduced from the above observations is that if material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal. After all the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention and if taking into account matters extraneous to the scope and purpose of the statute vitiates the subjective satisfaction and renders the detention order invalid then failure to take into consideration the most material or vital facts likely to influence the mind of the authority one way or the other would equally vitiate the subjective satisfaction and invalidate the detention order."

[Emphasis is mine]

37. In Smt. Rekhaben Virendra Kapadia Vs. State of Gujarat and Others, three Judge Bench of the Apex Court while placing reliance upon its earlier Judgment in Gora v. State of West Bengal (referred to supra) in para 8 held thus:

"If the detaining authority in this case had come to the conclusion taking into account the past activities of the detenu that he is likely to continue to indulge in such activities in future, there would be no justification for this Court to interfere."

38. That was a case where the time lag in between the past act and the detention order was between August, 1974 and February, 1977.

39. In Mohd. Yousuf Rather Vs. State of Jammu and Kashmir and Others, three Judge Bench of the Apex Court held in para 18 thus:

"The extent and the content of Article 22(5) have been the subject-matter of repeated pronouncements by this Court vide The State of Bombay Vs. Atma Ram Sridhar Vaidya, ; Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, , Shibban Lal Saksena Vs. The State of Utter Pradesh and Others, and Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir, . The interpretation of Article 22(5), consistently adopted by this Court, is, perhaps, one of the outstanding contributions of the Court in the cause of Human Rights. The law is now well settled that a detenu has two rights under Article 22(5) of the Constitution: (1) To be informed, as soon as may be, of the grounds on which the order of detention is based, that is, the grounds which led to the subjective satisfaction of the detaining authority, and (2) to be afforded the earliest opportunity of making a representation against the order of detention, that is, to be furnished with sufficient particulars to enable him to make a representation which on being considered may obtain relief to him. The inclusion of an irrelevant or non-existent ground among other relevant

grounds is an infringement of the first of the rights and the inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu entitling him to approach the Court for relief. The reason for saying that the inclusion of even a simple irrelevant or obscure ground among several relevant and clear grounds is an invasion of the detenu"s constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority."

[Emphasis is mine]

40. In Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, the Apex Court in paras 24 and 27 held thus:

"The detaining authority has of necessity to take into account all the relevant materials placed before it and after due consideration thereof may justifiably come to the conclusion that the activities of a particular person were such that he had a tendency to repeat his illegal activities. For this purpose the past conduct or antecedent history of a person can appropriately be taken into account by the authority in making a detention order.

In the present case the detenu himself admitted in his confession that he has his home in Bombay and business in Muscat. His passport disclosed that he was frequently shuttling between Muscat and India. Admittedly he smuggled the Palladium in question in order to make profit by selling it to customers in India. The detaining authority would be within its jurisdiction to take into consideration all these facts and subjectively come to a satisfaction whether or not the offender may be repeating his activities."

41. Again in para 28 the Apex Court held thus:

"The High Court under Article 226 and the Supreme Court either under Article 32 or 136 do not sit on appeal on the orders of preventive detention. The courts have only to se whether the formalities enjoined by Article 22(5) have been complied with by the detaining authority and if so, the courts cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detained the detenu under the Preventive Detention Act."

[Emphasis is mine]

42. In Smt. Phulwari Jagdambaprasad Pathak Vs. Shri R.H. Mendonca and Others, in para 6 the Apex Court held thus:

"Preventive detention measure is harsh, but it becomes necessary in the larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned

had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve, the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed."

[Emphasis is mine]

43. In Union of India and Others Vs. Arvind Shergill and Another, in para 4 the Apex Court held thus:

"The action by way of preventive detention is largely based on suspicion and the court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist warranting the restraint on a person. The language of Section 3 clearly indicates that the responsibility for making a detention order rests upon the detaining authority which alone is entrusted with the duty in that regard and it will be a serious derogation from that responsibility if the court substitutes its judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded. The court can only examine the grounds disclosed by the Government in order to see whether they are relevant to the object which the legislation has in view, that is, to prevent the detenu from engaging in smuggling activity. The said satisfaction is subjective in nature and such a satisfaction, if based on relevant grounds, cannot be stated to be invalid. The authorities concerned have to take note of the various facts including the fact that this was a solitary incident in the case of the detenu and that he had been granted bail earlier in respect of which the application for cancellation of the same was made but was rejected by the Court."

44. In Radhakrishnan Prabhakaran Vs. The State of Tamil Nadu and Others, the Apex Court held in para 11 thus:

"It is not for the Court to substitute its satisfaction but it is only a scrutiny to be made to ascertain whether the detaining authority had really arrived at the satisfaction that the detenu has to be preventively detained in public interest."

[Emphasis is mine]

45. In Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another, the Apex Court held in paras 11 and 12 thus:

"The law permitting preventive detention must be meticulously followed both substantively and procedurally by the detaining authority. The object of detention under the Act is not to punish but to prevent the commission of certain offences. Section 3(1) of the Act allows the detention of a person only if the appropriate detaining authority is satisfied that with a view to preventing such person from carrying on any of the offensive activities enumerated therein, it is necessary to detain such person. The satisfaction of the detaining authority is not a subjective one based on the detaining authority''s emotions, beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data."

[Emphasis is mine]

46. On facts, it was held that the two grounds mentioned by the authority were found to be not sufficient and they would invariably invalidate the impugned detention order.

47. In Safiya Vs. Government of Kerala and Others, in para 13 the Apex Court held thus:

"A careful perusal of the records placed before this Court would show that there are enough materials to show the involvement of the detenu in the smuggling activities. The State Government (detaining authority) has considered all the aspects and perused the relevant material documents before issuing the detention order. Such detention order was issued based on the subjective satisfaction as to the necessity of detaining the detenu by invoking the provisions of the COFEPOSA Act. The detenu, therefore, in our opinion, is not entitled to challenge the subjective satisfaction arrived at by the detaining authority in these proceedings."

[Emphasis is mine]

48. In A.C. Razia Vs. Government of Kerala and Others, three Judge Bench of the Apex Court restated the law on the preventive detention. In para 10 it was held thus:

"The dual rights under clause (5) of Article 22 are: (i) the right to be informed as soon as may be of the grounds on which the order has been made, that is to say, the grounds on which the subjective satisfaction has been formed by the detaining authority, and (ii) the right to be afforded the earliest opportunity of making a representation against the order of detention. By judicial craftsmanship certain ancillary and concomitant rights have been read into this article so as to effectuate the guarantees/safeguards envisaged by the Constitution under clause (5) of Article 22. For instance, it has been laid down by this Court that the grounds of detention together with the supporting documents should be made available to the detenu in a language known to the detenu. The duty to apprise the detenu of the right to make representation to one or more authorities who have power to reconsider or revoke the detention has been cast on the detaining authority. So also the

duty to consider the representation filed by or on behalf of the detenu with reasonable expedition has been emphasized in more than one case and where there was inordinate delay in the disposal of representation, the detention was set aside on that very ground."

49. In Hare Ram Pandey Vs. State of Bihar and Others, in para 6 the Apex Court held thus:

"The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is a purely subjective affair. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty would lose all their meanings are the true justification for the laws of preventive detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual''s conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs." This, no doubt, is the theoretical jurisdiction for the law enabling preventive detention is of utmost importance. The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other."

[Emphasis is mine]

50. From the above the following conclusions can be drawn. The object of the law of Preventive Detention is not punitive but only preventive. Before its invocation, the State must be convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects, which are specified in the relevant Act. The action by way of preventive detention is largely based on suspicion and,

therefore the Court is not an appropriate forum to investigate the question whether the circumstances of suspicion exist warranting the detention of a person. It is always the subjective satisfaction of the detaining authority on the material placed before it after applying its mind thereto on objective considerations. The propriety or reasonableness of the satisfaction of the authority upon which an order for detention is based, cannot be raised before the court. Sufficiency of the matters upon which such satisfaction purports to be grounded cannot be investigated into by the court. The court can neither decide whether the grounds are good or bad, nor it can attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. The Court cannot, on a review of the grounds, substitute its own opinion for that of the authority. It is only a scrutiny to be made to ascertain whether the detaining authority had really arrived at the satisfaction. In a habeas corpus petition, the Court has to consider whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a satisfaction. However, the satisfaction of the authority must be real and rational and not colourable, fanciful, mechanical or unrelated to the objects enumerated in the concerned Act and the grounds must not be vague or indefinite and must afford a real opportunity to make a representation against the detention

51. Failure to take into consideration the most material or vital facts likely to influence the mind of the authority one way or the other would vitiate the subjective satisfaction. The inclusion of an irrelevant or non-existent ground and inclusion of an obscure or vague ground among other clear and definite grounds is an infringement of the rights. The satisfaction of the detaining authority shall not be based on its emotions, beliefs or prejudices and there must be a real likelihood of the person being able to indulge in such activities.

52. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order. That will depend on the facts and situation of a case. The material should be true and should have a reasonable nexus with the purpose for which the order is passed. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. The past conduct or antecedent history of a person can appropriately be taken into account by the authority in making a detention order. The question would be whether the past activities of the detenue are such that the detaining authority could reasonably come to the conclusion that the detenu is likely to continue his unlawful activities. Even a solitary event is sufficient in the given set of facts. It all depends on the nature of the acts relied on. However, the subjective satisfaction of the detaining authority is not wholly immune from judicial reviewability. The Court can always examine as to whether the requisite satisfaction has been arrived at by the authority as required under the statute or not. To that end, the Court should see whether authority has applied its mind to the material or not; whether the power has been exercised dishonestly or for an

improper purpose, which would negative the existence of satisfaction; whether the authority has acted under the dictation of any other body in which event the exercise of power would be bad; whether the authority has based its decision on the application of a wrong test or mis-construction of a statute; whether the satisfaction is grounded on materials which are of rationally probative value and connected with the fact in respect of which the satisfaction is to be reached and the material must be relevant to the subject matter of enquiry and must not be extraneous to the scope and purpose of the statute.

53. Apropos the contention that the incidents mentioned inter alia in the detention order and in the grounds annexed thereto are stale and are not proximate to the order of detention, it is expedient at the threshold to notice the law on the point.

54. In Golam Hussain alias Gama Vs. The Commissioner of Police Calcutta and Others, in para 5 the Apex Court held thus:

"It is true that there must be a live link between the grounds of criminal activity alleged by the detaining authority and the purpose of detention. No authority, acting rationally can be satisfied, subjectively or otherwise, of future mischief merely because long ago the detenu had done something evil. But no mechanical test by counting the months of the interval is sound. It all depends on the nature of the acts relied on, grave and determined or less serious and corrigible, on the length of the gap short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation. If the detaining authority takes the chance of conviction and, when the court verdict goes against it, falls back on its detention power to punish one whom the court would not convict, it is an abuse and virtual nullification of the judicial process. But if honestly finding a dangerous person getting away with it by overawing witnesses or concealing the commission cleverly, an authority thinks on the material before him that there is likelihood of and need to interdict public disorder at his instance he may validly direct detention."

[Emphasis is mine]

55. That was a case where there was a long gap of nine months in between the alleged incident and the order of detention.

56. In Gora Vs. State of West Bengal, the Apex Court in para 2 held thus:

"The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the offending acts and the order of detention. It is a subsidiary test evolved by the court for the purpose of determining the main question whether the past activities of the detenu is such that from it a reasonably prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only in so far as it subserves that purpose and it cannot be allowed to dominate or drown it."

[Emphasis is mine]

57. In Wasiuddin Ahmed Vs. District Magistrate, Aligarh, U.P. and Others, the Apex Court in paras 20 and 21 considered the distinction between the concepts of "law and order" and "public order". In para 24 it was held thus:

"The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is indeed usually from prior events showing tendencies or inclination of a man that an inference is drawn whether he is likely in the future to act in a manner prejudicial to the maintenance of public order. Of course, such prejudicial conduct or antecedent history should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary."

[Emphasis is mine]

58. In Fitrat Raza Khan Vs. State of Uttar Pradesh and Others, the Apex Court held in para 4 thus:

"It is true that the order of detention is based on two grounds which relate to two incidents, one of Aug. 14, 1980, and the other of July 24, 1981, i.e., the second incident was after a lapse of about a year, but both the incidents show the propensities of the petitioner to instigate the members of the Muslim community to communal violence. The unfortunate communal riots which took place in Moradabad City led to widespread carnage and bloodshed resulting in the loss of many innocent lives. The memory of the communal riots is all too recent to be a thing of the past. The past conduct or antecedent history of a person can appropriately be taken into account in making a detention order. It is usually from prior events showing tendencies or inclinations of a man that an inference can be drawn whether he is likely, in the future, to act in a manner prejudicial to the maintenance of public order. Although there was a lapse of a year but the incident of July 24, 1981, was just on the eve of the Id festival and the ground alleged is that the petitioner was trying to instigate the Muslims to communal violence by promise of better arms, with a view to an open confrontation between the two communities. It cannot be said that the prejudicial conduct or antecedent history of the petitioner was not proximate in point of time and had no rational connection with the conclusion that his detention was necessary for maintenance of public order."

[Emphasis is mine]

59. In David Patrick Ward and Another Vs. Union of India (UOI) and Others, in para 22 a three Judge Bench of the Apex Court held thus:

"The detaining authority can base its order of detention even on a solitary act provided that the conduct of the person concerned with the act in the circumstances in which it was committed, is of such a nature as would enable the formation of requisite satisfaction that the person, if not prevented by an order of detention, is likely to indulge in repetition of similar acts in future."

[Emphasis is mine]

60. In Chowdarapu Raghunandan Vs. State of Tamil Nadu and Others, in para 13 the Apex Court held thus:

"It is true that in appropriate case, an inference could legitimately be drawn even from a single incident of smuggling, that the person may indulge in smuggling activity but for that purpose antecedents and nature of the activities carried out by a person are required to be taken into consideration for reaching justifiable satisfaction that the person was engaged in smuggling and that with a view to prevent, it was necessary to detain him. An order of preventive detention is founded on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances. Such past conduct may consist of one single act or a series of acts. It must be of such a nature that an inference can reasonably be drawn from it that the person concerned would be likely to repeat such acts so as to warrant his detention. If there is non-application of mind by the authority on this aspect, then the court is required and is bound to protect the citizen''s personal liberty which is guaranteed under the Constitution. Subjective satisfaction of the authority under the law is not absolute and should not be unreasonable. The question, therefore, would be from the past conduct of the petitioner as set out in the grounds of detention or other circumstances a reasonable inference could be drawn that he is likely to repeat such acts in the future.

[Emphasis is mine]

61. On facts, the Apex Court was of the view that it was totally unreasonable to arrive at a reasonable prognosis that the petitioner is likely to indulge any such prejudicial activities.

62. In DARPAN KUMAR SHARMA V. STATE OF TAMIL NADU, 2003 CRI.L.J. 1222, having regard to the fact there was a solitary incident where the detenu was alleged to have robbed a person at knife point in a public place, the Apex Court held that the reach and potentiality of the single incident of robbery was not so great as to disturb even tempo or normal life of community in locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality.

63. In Kamlakar Prasad Chaturvedi Vs. State of M.P. and Another, , upon which the learned senior counsel Sri C.Padmanabha Reddy places reliance, a three Judge Bench of the Apex Court by a majority of 2 : 1 has taken the view that the grounds of detention related to incidents which were more than 5 and 2 years prior to the date of order of detention and, therefore, it was not open to the detaining authority to pick up old and stale incidents and hold it as the basis of an order of detention u/s 3(2) of the National Security Act. The minority view taken by Desai, J was that the events of 1978 and 1980 referred to in the grounds No. 1 and 2 cannot be rejected as a stray or not proximate to the making of the detention order and they provide the genesis of the continuity of the prejudicial activity of the detenu and therefore the detention order on the premises that the grounds

No. 1 and 2 are stale, could not be set aside. However, the majority view rendered by Varadarajan, J was that the grounds of detention must be precise, pertinent, proximate and relevant. Vagueness and staleness would vitiate the grounds of detention.

64. From the facts of that case, it is clear that the incidents mentioned therein pertain to the years 1978 and 1980 whereas the order of detention was passed on 06.05.1983. In that view of the matter, it was held that the grounds relied upon were too remote and not proximate to the order of detention. Obviously, the Judgment proceeded purely on facts peculiar to that case.

65. In Vijay Narain Singh Vs. State of Bihar and Others, three Judge Bench of the Apex Court by a majority of 2 : 1 held having regard to the fact that the interval between the first incident and the third incident was of nearly 8 years, the detenu could not be treated as habitual offender and that remoteness in point of time makes the ground of detention irrelevant. The opposite view was taken by A.P. Sen, J. The minority view has distinguished the two earlier Judgments of the Apex Court in Shibban Lal Saksena''s case and Kamlakar Prasad''s case (referred to supra) and placed reliance upon the Judgment of the Apex Court in Fitrat Raza Khan''s case (referred to supra) which held that the past conduct or the antecedent history of a person can properly be taken into account in making an order of detention.

66. In MUSTAAKMIYA JABBARMIYA SHAIKH v. M.M.MEHTA (referred to supra) the Apex Court while considering the distinction between ''public order'' and ''law and order'' in para 10 has held with reference to the facts of that particular case thus:

"As can be seen from the grounds of detention when the first incident took place on 24.04.1993 and the detention order was passed on 19.08.1994, that is, after the lapse of more than 16 months it was held that this long lapse of time between the alleged prejudicial activity and the detention order loses its significance because the said prejudicial conduct was not proximate in point of time and had no rational connection with the conclusion that the detention was necessary for maintenance of public order. Such a stale incident cannot be construed as justifiable ground for passing order of detention."

[Emphasis is mine]

67. In AMANULLA KHAN KUDEATALLA KHAN PATHAN v. STATE OF GUJARAT (referred to supra) the Apex Court held in para 4 thus:

"The expression "habitually" would obviously mean repeatedly or persistently. It implies the threat of continuity of the activities and, therefore, an isolated act would not justify an inference of habitual commission of this activity. Therefore, the question that requires adjudication is whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu."

68. On facts, the Apex Court was of the view that there had been no substance in the contention that the satisfaction of the detaining authority that the detenu is a "dangerous person" is based upon a solitary incident in respect of which a criminal case had already been registered. The detaining authority had considered the different incidents and not a solitary incident and, therefore, the test of repeatedness or continuity of the activity was fully satisfied.

69. Kamlakar Prasad"s case, Vijaya Narain Singh"s case, Mustaakmiya Jabbarmiya Shaikh"s case and Amanulla Khan"s case failed to notice the four Judge Bench case of the Apex Court in Khudiram Das"s case and a co-equal Bench case in Smt. Rekhaben"s case. Subsequent to Mustaakmiya Jabbarmiya Shaikh"s case, again the Apex Court in Chowdarapu Raghunandan"s case and Darpan Kumar Sharma"s case has reiterated the view taken in a long line of authority rendered preceding Kamlakar Prasad"s case. Having regard to the Khudiram Das"s case which is a four Judge Bench Judgment and the long line of authority of the Apex Court rendered preceding Kamlakar Prasad"s case and subsequent thereto, I am of the considered view that, that view prevails and binding upon me vis-ï¿½-vis Kamlakar Prasad"s case followed up by Vijaya Narain Singh"s case, Mustaakmiya Jabbarmiya Shaikh"s case and Amanulla Khan"s case. The views expressed by the Apex Court in those four Judgments shall have to be taken as having been expressed in accordance with the facts in those cases but not as a rigid principle of law.

70. In Mohd. Ahmed Khan Vs. Government of Andhra Pradesh and Others, a Division Bench of this Court dealt with the provisions of the Act 1 of 1986. That was a case where a crime was registered against the detenu in crime No. 280/99 for the offences of cheating and forgery in connection with the land grabbing. Another offence was registered against the detenu as crime No. 58/2001 for the offences punishable u/s 307, 387, 467, 447, 468 and other allied offences for trying to evict the occupants of the Government land forcibly. The authority under the Act on the ground that the activities of the detenu caused a feeling of insecurity among the public and are prejudicial to the maintenance of public order directed the detention of the detenu under the provisions of the Act 1 of 1986. Placing reliance upon the Judgments of the Apex Court in Jagan Nath Biswas Vs. The State of West Bengal, and MUSTAAKMIYA JABBARMIYA SHAIKH V. M.M.MEHTA, the Division Bench held that the subjective satisfaction of the detaining authority based on the incidents dated 19.03.1999 and 12.05.1999 is totally vitiated, as such incidents do not provide a rational nexus between the incidents relied on and the satisfaction arrived at.

71. In M. Ashok Goud Vs. The Collector and Dist. Magistrate and Others, a Division Bench of this Court placing reliance upon a Judgment of the Apex Court in Kamalakar Prasad"s case held in para 6 thus:

"In view of this position of law as laid down by the Supreme Court and having found that two of the grounds are too remote, it cannot be assumed or postulated what view would

have been taken by the District Magistrate had he not considered these two grounds before ordering the detention. The detention cannot be upheld."

72. Both the above Bench Judgments of this Court have been rendered placing reliance upon Kamlakar Prasad''s case.

> 73. From the facts in the case on hand, it is obvious that as many as five cases in C.C. Nos. 211/2001; 1677/1999; 799/2000; 1059/2000 and 1188/2003 are pending on the file of the Additional Judicial Magistrate of First Class (West & South), Ranga Reddy District against the detenue. In all the above cases, charge sheets have been filed against her under Sections 3, 4, 5 and 7 of the Act, 1956. The crimes in respect of those cases had been registered earlier in crime Nos. 354/1998; 650/1999; 426/2000; 612/2000; and 935/2003 respectively by the Kukatpally Police. It was alleged that the detenue was managing a brothel in her house. In connection with the above crimes, she was arrested on 27.05.1998; 05.10.1999; 06.07.2000; 17.09.2000; and 14.11.2003 respectively. There has been no gainsaying that she has been enlarged on bail in all the above crimes which fact has not been mentioned in the grounds annexed to the order of detention. Out of five crimes registered against the detenue, four of them pertain to the period preceding 17.09.2000. Thereafter, after a gap of nearly 3 years 2 months, on 14.11.2003 she was arrested in connection with the last mentioned crime. The order of detention in this case was passed on 20.01.2004 and was approved by the Government on 28.01.2004 and later confirmed by the Government on 15.03.2004 after having considered the report dated 04.03.2004 given by the Advisory Board and the material available on record.

74. The fact that she has been enlarged on bail in all the four cases has no relevance when a fresh crime has been registered against her just two months earlier to the date of detention order. The granting of bail in a case cannot ultimately influence the order of detention. As a matter of that, even the order of acquittal or possibility of a case being acquitted has no significance when the detaining authority entertains suspicion that if such an order is passed that may ultimately lead to encourage the detenue to act in a manner prejudicial to the public order. Here is a case where the gap in between the 5th incident and the detention order is not that long so as to conclude that it is stale or not proximate. The nature of the offences alleged to have been perpetrated by the detenue are the same. In that view of the matter, notwithstanding the fact that there has been a gap of nearly three to five years in between the 5th incident and the earlier four incidents is of no consequence.

75. The contention that wrong enactment has been mentioned in the detention order as well as the grounds annexed therewith merits no consideration for the reason that in the Act 1 of 1986 there has been a reference to Immoral Traffic in Women and Girls Act, 1956 and the title of the said Act was subsequently substituted by Act 44 of 1986 as Immoral Traffic (Prevention) Act, 1956 with effect from 26.01.1987. Act 1 of 1986 has not been suitably amended commensurate with the change in the title of the Act. However, in the detention order as well as the grounds annexed therewith, it has been mentioned as

Act, 1988 instead of Act, 1956. Apparently, it appears to be a typographical error. In my considered view, it is not a case of wrong mentioning of a provision or wrong Act or mentioning of a non-existent ground and consequently non-application of mind. Such a contention cannot, for the above reasons, be countenanced.

76. Having regard to the above discussion, it cannot be said that the subjective satisfaction of the detaining authority is in any manner vitiated and, therefore, the writ petition must fail. For the above reasons, I concur with the view expressed by my learned Sister Ms. T.Meena Kumari, J.