THE COMMISSIONER OF POLICE AND ORS. A

v.

SMT. C. ANITA

AUGUST 23, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.] B

Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986—Section 3(2)—Detention under—Detention order mentioning that detenue was a history sheeter, 30 cases had been instituted against him and highlighted gravity of his acts in two specific instances—Writ petition against detention—Detention order quashed by High Court—On appeal, held : In the facts of the case detention order rightly made—Court cannot substitute its opinion for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant. C

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'Law and Order' and 'Public Order'—Distinction between—Discussed.

'Preventive Detention'—Meaning, Nature and Object of—Held : It is preventive and not punitive—It is jurisdiction of suspicion—Satisfaction of Detaining Authority is of prime importance.

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Husband of respondent (detenu) was detained under Section 3(2) of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. Appellant filed Writ Petition on the ground that the alleged acts as highlighted in the order of detention could not be said to be prejudicial to the maintenance of public order; and that since the incidents mentioned took place long back, there was no live link to warrant the detention order. High Court quashed the order of detention holding that even though there was proximity with the incidents highlighted in the detention order there was nothing to show that those acts affected maintenance of public order. F G

In appeal to this Court appellants contended that the detention order clearly showed that the activities of the detenu were prejudicial to the maintenance of public order; and that apart from the specific two instances mentioned in the detention order, nearly 30 cases were H

A instituted against the detenu.

Allowing the appeal, the Court

HELD : 1. Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are to
B punish a person for an offence committed by him. They are not parallel proceedings. 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
C which are specified by the concerned law. The action of Executive in detaining a person being only precautionary, normally 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
D 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. This jurisdiction has at times been even called jurisdiction of suspicion. The law has to be justified by striking the
E right balance between individual liberty on the one hand and the needs of an orderly society on the other. [705-C-G; 706-A; 706-C]

Union of India v. *Amrit Lal Manchanda and Anr.*, [2004] 3 SCC 75, referred to.

F

2. While an expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such contravention which affects the community or the pubic at large. The distinction between the areas of 'law and order' and 'public order' is
G one of the degree and extent of the reach of the act in question on society. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. "Public order" is something more than ordinary maintenance of "law and order".
H Every breach of the peace does not lead to public disorder. Disorder

is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. The true distinction between the areas of "law and order" and "public order" lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than those affecting "security of State". [707-D-G; 708-C-D; 709-C-D; 709-F-G]

Kanu Biswas **v.** *State of West Bengal,* **AIR (1972) SC 1656;** *Dr. Ram Manohar Lohia* **v.** *The State of Bihar and Ors.,* **[1966] 1 SCR 709;** *Kishori Mohan Bera* **v.** *The State of West Bangal,* **[1972] 3 SCC 845;** *Pushkar Mukherjee* **v.** *State of West Bengal,* **[1969] 2 SCR 635;** *Arun Ghosh* **v.** *State of West Bengal* **[1970] 3 SCR 288;** *Nagendra Nath Mondal* **v.** *State of West Bengal,* **[1972] 1 SCC 498;** *Babul Mitra alias Anil Mitra* **v.** *State of West Bengal and Ors.,* **[1973] 1 SCC 393;** *Milan Banik* **v.** *State of West Bengal,* **[1974] 4 SCC 504;** *Kuso Sah* **v.** *The State of Bihar and Ors.,* **[1974] 1 SCC 185;** *Harpreet Kaur* **v.** *State of Maharashtra,* **[1992] 2 SCC 177;** *T.K. Gopal* **v.** *State of Karnataka,* **[2000] 6 SCC 168 and** *State of Maharashtra* **v.** *Mohd. Yakub,* **[1980] 2 SCR 1158, relied on.**

3. The order of detention shows the detenu was history sheeter against whom more than 30 cases had been instituted. Two specific instances which indicated the gravity of his acts were highlighted. The Court cannot substitute its own opinions for that of the Detaining Authority when the grounds of detention are precise, pertinent, proximate and relevant. That is the case here. There is no vagueness or staleness. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which have been precisely stated. The two incidents clearly substantiate the subjective satisfaction arrived at by the Detaining Authority as to how the acts of the detenu were prejudicial to the maintenance of public order. [709-H; 710-A; 710-C-E]

CRIMINAL APPELATE JURISDICTION : Criminal Appeal No. 922 of 2004

From the Judgment and Order dated 11.9.2003 of the Andhra Pradesh High Court in W.P. No. 16195 of 2003.

A Mrs. D. Bharathi Reddy, B. Vikas and G. Venugopal, for the Appellants.

Radhakrishnan, Ms. Pooja Nanekar, Ms. Priya Madhavan and Uday Kumar Sagar for M/s. Lawyer's Knit & Co. for the Respondent.

B

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

C The State of Andhra Pradesh calls in question legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court quashing the order of detention dated 15.7.2003 passed by the Commissioner of Police, Hyderabad City (in short the 'Commissioner') directing detention of Chinnaboina Shankar @ C. Shankar (hereinafter referred to as the 'detenu'). The order of detention was passed in terms of Sub-section (2) D 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 (in short the 'Act'). Wife of the detenu Smt. C. Anita filed a *habeas corpus* writ application before the Andhra Pradesh High Court questioning legality of the order of detention. The primary E stand taken in the writ petition was that the alleged acts as highlighted in the grounds of detention by no stretch of imagination can be called to affect public tranquility and/or be prejudicial to the maintenance of public order. It was submitted that the incidents to which reference was made in the grounds of detention allegedly took place long back and there was no live link to warrant the order of detention. The High Court held that though F there was proximity with the incident highlighted in the order of detention there was nothing to show that those acts were affecting maintenance of public order. It was further held that even if the detenu was held to be a goonda and land grabber that was not sufficient to warrant preventive detention. Accordingly the order of detention was quashed.

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Learned counsel for the appellants submitted that the High Court's approach is clearly erroneous. The grounds of detention not only referred to the two specific instances but also clearly indicated as to how nearly 30 cases were instituted against the detenu and the adverse effect of his H activities which created a sense of terror affecting public tranquility.

Reference was made to paragraph 3 of the order of detention which according to learned counsel was sufficient to show as to in what manner the activities of the detenu were prejudicial to the maintenance of public order.

In response, learned counsel appearing for the respondent submitted that at the most the allegations made affect some individuals but there was no public order involved. The alleged incidents referred to in the grounds of detention took place long before the issuance of order of detention and, therefore, the High Court was justified in quashing the order of detention.

Before dealing with rival submissions, it would be appropriate to deal with the purpose and intent of preventive detention. Preventive detention is an 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 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 concerned law. The action of Executive in detaining a person being only precautionary, normally 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 considered to be of primary importance, with great latitude in the exercise of its discretion. 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 of citizens would loose all their meanings provide the justification for the laws of preventive detention. 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

A that part of the offender. This jurisdiction has at times been even 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 for individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to lose the B 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 jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an C orderly society on the other. These aspects were highlighted in *Union of India* v. *Amrit Lal Manchanda and Ors.,* [2004] 3 SCC 75.

A few provisions which have relevance need to be noted. Section 2(b) and 2(g) define 'boot legger' and 'goonda' respectively. They read as D follows:

> "2(b) - 'boot legger' means a person, who distils, manufacturers, stores, transports, imports, exports, sells or distributes any liquor intoxicating drug or other intoxicant in E contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968, and the rules, notifications and orders made thereunder or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any F receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other person, or who abets in any other manner the doing of any such thing;
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> G 2(g)-'goonda' means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860."

H Sub-section (2) of Section 3 with reference to which the order of

detention has been passed reads as follows: A

> "If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in B writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:
>
> Provided that the period specified in the order made by the C Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time. D

The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order. 'Public order' has a narrower ambit, and public order could be affected by only such E contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb F the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting 'public G order' from that concerning 'law and order'. The question of ask is; "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed"? This question has to be faced in every case on its facts. H

A "Public order" is what the French call *'ordre publique'* and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, is: Does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely B an individual leaving the tranquility of the society undisturbed? (See *Kanu Biswas* v. *State of West Bengal,* AIR (1972) SC 1656.

"Public order" is synonymous with public safety and tranquility: "It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, C affecting the security of the State". Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public D order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings (See *Dr. Ram Manohar Lohia* v. *State of Bihar and Ors.,* [1996] 1 SCR 709.

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'Public Order', 'law and order' and the 'security of the State' fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, F but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there G can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. (See *Kishori Mohan Bera* v. *The State of West Bengal,* [1972] 3 SCC 845; *Pushkar Mukherjee* v. *State of West Bengal,* [1969] 2 SCR 635; H *Arun Ghosh* v. *State of West Bengal,* [1970] 3 SCR 288; *Nagendra Nath*

Mondal v. *State of West Bengal,* [1972] 1 SCC 498). A

The distinction between 'law and order' and 'public order' has been pointed out succinctly in *Arun ghosh's* case (supra). According to that decision the true distinction between the areas of 'law and order' and 'public order' is "one of degree and extent of the reach of the act in B question upon society". The Court pointed out that "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different". (See *Babul Mitra alias Anil Mitra* v. *State of West Bengal and Ors.,* [1973] 1 SCC 393, *Milan Banik* v. *State of West Bengal,* [1974] 4 SCC 504.

C

The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the D problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

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The two concepts have well defined contour, it being well established that stray and unorganized crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and F order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" justice as "public order"comprehends disorders of less gravity than those affecting "security of State". (See *Kuso Sah* v. *The State of Bihar and Ors.,* [1974] 1 SCC 185, *Harpreet Kaur* v. *State of* G *Maharashtra,* [1992] 2 SCC 177; *T.K. Gopal* v. *State of Karnataka,* [2000] 6 SCC 168 and *State of Maharashtra* v. *Mohd. Yakub,* [1980] 2 SCR 1158.

A bare reading of the order of detention shows the detenu was a history sheeter against whom more than 30 cases had been instituted. Two H

A specific instances which indicated the gravity of his acts were highlighted. Paragraphs 3 and 6 of the grounds of detention read as follows:

> "3-Your unlawful acts in the area are creating terror in the minds of the public and that the law abiding citizens are afraid
B of buying plot/lands and building houses due to fear and they are also afraid to come forward to lodge any complaint to the police against you or make any representation.
>
> 6-Thus, you are indulging in goondaism, land grabbing and your activities are causing a feeling of insecurity and fear in the
C public and thus are prejudicial to the maintenance of public order."

The Court cannot substitute its own opinions for that of the detaining authority when the grounds of detention are precise, pertinent, proximate
D and relevant. That is the case here. There is no vagueness or staleness. The incidents have been highlighted in the grounds of detention coupled with the definite indication as to the impact thereof which have been precisely stated in paragraph 3 of the grounds of detention quoted above. The two incidents referred to show as to in what manner the detenu was demanding
E money from whosoever was purchasing land and giving threats to kill if the demands were not met. The incidents clearly substantiate the subjective satisfaction arrived at by the detaining authority as to how the acts of the detenu were prejudicial to the maintenance of public order. These aspects have not been considered by the High Court. Learned counsel for the
F detenu submitted that even if it is so the judgment of the High Court should not be set aside and the matter could be remitted back to it for fresh decision. We find no substance in such a plea. The order of detention has a specific purpose to serve. That being so, we set aside the judgment of the High Court. The detenu shall forthwith surrender to custody to serve the remainder period of sentence. The appeal is allowed.

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K.K.T. Appeal allowed.